



THE CITY OF SAN DIEGO  
**REPORT TO THE CITY COUNCIL**

DATE REPORT ISSUED: April 19, 2011

ATTENTION: Land Use and Housing Committee  
Agenda of April 27, 2011.

SUBJECT: Consultant Agreement to provide environmental consulting services for the San Ysidro Community Plan Update process.

REQUESTED ACTION: Recommend City Council approval of the consultant Agreement.

STAFF RECOMMENDATION:

RECOMMEND that the City Council authorize the Mayor to execute an agreement with HELIX Environmental Planning, Inc. to provide consulting services (in the amount of \$379,624) for preparation of an Environmental Impact Report for the San Ysidro Community Plan update.

SUMMARY:

In July, 2010, CPCI initiated a comprehensive update of the San Ysidro community plan. The general purpose of the plan update is to reflect current conditions and the long-term vision for the community. Over the past several months, CPCI staff has been working closely with our primary consultant firm (RRM Design Group), various community stakeholders and other regional agencies to coordinate the public outreach component of the plan update. A series of meetings and public workshops have already been held in the community to discuss numerous topics that will be addressed as part of the update process.

A major component of the update process will involve the preparation of an Environmental Impact Report to identify and address various CEQA related impacts associated with plan recommendations and policies. Accordingly, the City recently completed a competitive bidding process (via RFP solicitation) for the selection of an environmental consultant to assist staff in preparing the plan update EIR.

The RFP was advertised in the San Diego Daily Transcript and was also published in the City's website. The list of firms that were used to solicit this RFP came from the City's Professional Environmental Consultant List (maintained by the City's Purchasing and Contracts Department). The City received a total of five submittals for this EIR RFP.

A Technical Evaluation Committee (consisting of city staff) was formed to review and evaluate the various technical proposals. The criteria used by the committee for the technical evaluation

of the proposals included qualifications, experience, and past performance (as indicated by references).

As a result of the bidding process, staff has selected the firm of HELIX Environmental Planning, Inc. to complete various technical studies and tasks associated with preparing and completing an EIR for the plan update. HELIX will coordinate with other sub-consultant firms (Rick Engineering, Estrada Land Planning, Allied Geotechnical Engineering) to complete a variety of technical studies for CEQA evaluation; including analysis of community plan alternatives, and preparation of a Draft and Final EIR for the plan update process.

ENVIRONMENTAL ANALYSIS:

Executing an agreement for professional planning consultant services is statutorily exempt from CEQA pursuant to state CEQA guidelines Section 15262. The community plan update process itself will be subject to environmental review in accordance with CEQA.

FISCAL CONSIDERATIONS:

The total cost of HELIX Environmental Planning, Inc. would not exceed \$379,624. Funding for this consultant contract is currently available in Fund No. 200354 (previously Fund No. 10269) via a prior year (2008) transfer of \$2,000,000 of Redevelopment Funds to CPCI for the specific purpose of funding all components of the plan update.

EQUAL OPPORTUNITY CONTRACTING INFORMATION:

Helix Environmental Planning, Inc. has a current and completed Equal Opportunity Contracting (EOC) Workforce Report on file with the City. This agreement is subject to the City's Equal Opportunity Contracting (San Diego No. 18173, Section 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Section 22.3501 through 22.3517).

PREVIOUS COUNCIL ACTION:

On October 7, 2008, the San Diego Redevelopment Agency authorized the transfer of \$2,000,000 of redevelopment funds to the City via Fund No. 200354 (previously Fund No. 10269) for the specific purpose of financing costs associated with facilitating a comprehensive update of the San Ysidro community plan; and authorized the Controller to appropriate the fund transfer.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On July 15, 2008, San Ysidro Community Planning Group unanimously voted (voted 10-0-0) in support of initiating and funding the San Ysidro Community plan update.

KEY STAKEHOLDERS & PROJECTED IMPACTS:

CPCI began a comprehensive update of the San Ysidro community plan in July, 2010. Over the past several months, CPCI staff has been working closely with a primary consultant firm (RRM Design Group) and other regional agencies (MTS, Caltrans, GSA) to coordinate the public outreach component of the plan update. A stakeholder's advisory committee (consisting of representatives from various community organizations and public agencies) was formed to help guide the public outreach effort. A series of meetings and public workshops have already been held in the community to discuss a variety of issues that will need to be addressed as part of the update process.


CITY COUNCIL CONTRACT APPROVAL:

This item (consultant contract approval) will be scheduled for City Council approval pending a recommendation by the Land Use and Housing Committee.

Respectfully submitted,



William Anderson, FAICP  
Director  
City Planning & Community Investment



Jay M. Goldstone  
Chief Operating Officer

Attachments:            1. Draft contract – Helix Environmental Planning, Inc.

ANDERSON/WRIGHT/SULLIVAN

ATTORNEY CLIENT CONFIDENTIAL

**AGREEMENT BETWEEN  
THE CITY OF SAN DIEGO  
AND  
HELIX ENVIRONMENTAL PLANNING, INC.  
FOR  
ENVIRONMENTAL CONSULTING SERVICES FOR THE SAN  
YSIDRO COMMUNITY PLAN UPDATE**

**CONTRACT NUMBER: H105081**

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## **CONSULTANT AGREEMENT EXHIBITS**

- Exhibit A - Scope of Services
- Exhibit B - Compensation and Fee Schedule
- Exhibit C - Time Schedule
- Exhibit D - City's Equal Opportunity Contracting Program Consultant Requirements  
(AA) Work Force Report  
(BB) Subcontractors List  
(CC) Contract Activity Report
- Exhibit E - Consultant Certification for a Drug-Free Workplace
- Exhibit F - Consultant Evaluation Form
- Exhibit G - Vendor Registration Form
- Exhibit H - Contractor Standards Pledge of Compliance
- Exhibit I - Determination Form
- Exhibit J- Equal Benefits Ordinance Certification of Compliance



**AGREEMENT BETWEEN  
THE CITY OF SAN DIEGO  
AND HELIX ENVIRONMENTAL PLANNING, INC.  
FOR CONSULTANT SERVICES**

THIS Agreement is made and entered into between the City of San Diego, a municipal corporation [City], and Helix Environmental Planning, Inc. [Consultant] for the Consultant to provide Services to the City for preparing and completing an Environmental Impact report (EIR) for the San Ysidro Community Plan update process

**RECITALS**

The City wants to retain the services of a professional consulting firm to provide environmental consulting services (i.e. preparation of EIR) for the San Ysidro Community Plan update process [the Services].

The Consultant has the expertise, experience and personnel necessary to provide the Services. The City and the Consultant [Parties] want to enter into an Agreement whereby the City will retain the Consultant to provide, and the Consultant shall provide, the Services.

In consideration of the above recitals and the mutual covenants and conditions set forth, herein, and for good and valuable consideration, the sufficiency of which are hereby acknowledged, the Parties hereby set forth their mutual covenants and understandings as follows:

**ARTICLE I**

**CONSULTANT SERVICES**

The above-listed recitals are true and correct and are hereby incorporated by reference.

**1.1 Scope of Services.** The Consultant shall perform the Services as set forth in the written Scope of Services [Exhibit A] at the direction of the City

**1.2 Contract Administrator.** The City Planning & Community Investment Department is the contract administrator for this Agreement. The Consultant shall provide the Services under the direction of a designated representative of the City Planning & Community Investment Department. The City's designated representative will communicate with the Consultant on all matters related to the administration of this Agreement and the Consultant's performance of the Services rendered hereunder. When this Agreement refers to communications to or with the City, those communications will be with the designated representative, unless the designated representative or the Agreement specifies otherwise. However, when this Agreement refers to an act or approval to be performed by City, that act or approval shall be performed by the Mayor or his designee, unless the Agreement specifies otherwise.

**1.3 City Modification of Scope of Services.** The City may, without invalidating this Agreement, order changes in the Scope of Services by altering, adding to or deducting from the

Professional Services to be performed. All such changes shall be in writing and shall be performed in accordance with the provisions of this Agreement. If any such changes cause an increase or decrease in the Consultant's cost of, or the time required for, the performance of any of the Professional Services, the Consultant shall immediately notify the City. If the City deems it appropriate, an equitable adjustment to the Consultant's compensation or time for performance may be made, provided that any adjustment must be approved by both Parties in writing in accordance with Section 9.1 of this Agreement.

**1.4 Written Authorization.** Prior to performing any Services, the Consultant shall obtain from the City a written authorization to proceed. Further, throughout the term of this Agreement, the Consultant shall immediately advise the City in writing of any anticipated change in the Scope of Services (Exhibit A), Compensation and Fee Schedule [Exhibit B], or Time Schedule [Exhibit C], and shall obtain the City's written consent to the change prior to making any changes. In no event shall the City's consent be construed to relieve the Consultant from its duty to render all Services in accordance with applicable laws and accepted industry standards.

**1.5 Confidentiality of Services.** All Services performed by the Consultant, including but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by the Consultant, pursuant to this Agreement, are for the sole use of the City, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the City. This provision does not apply to information that (a) was publicly known, or otherwise known to the Consultant, at the time that it was disclosed to the Consultant by the City, (b) subsequently becomes publicly known through no act or omission of the Consultant, or (c) otherwise becomes known to the Consultant other than through disclosure by the City. Except for Subcontractors covered by Section 4.4, neither the documents nor their contents shall be released to any third party without the prior written consent of the City.

**1.6 Competitive Bidding.** If applicable, the Consultant shall comply with the following: Consultant shall ensure that any plans, specifications, studies, or reports prepared, required, or recommended under this Agreement allow for competitive bidding. The Consultant shall prepare such plans, specifications, studies, or reports so that procurement of services, labor or materials are not available from only one source, and shall not prepare plans, specifications, studies, or reports around a single or specific product, piece of major equipment or machinery, a specific patented design, or a proprietary process, unless required by principles of sound engineering practice and supported by a written justification that has been approved in writing by the City. The Consultant shall submit this written justification to the City prior to beginning work on such plans, specifications, studies, or reports. Whenever the Consultant recommends a specific product or equipment for competitive procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the Project.

## **ARTICLE II**

### **DURATION OF AGREEMENT**

**2.1 Term of Agreement.** This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40. Unless otherwise terminated, it shall be effective until completion of the Scope of Services, or April 2, 2016, whichever is the earliest but not to exceed five years unless approved by City ordinance.

**2.2 Time of Essence.** Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement. The time for performance of the Scope of Services (Exhibit A) is set forth in the Time Schedule (Exhibit C).

**2.3 Notification of Delay.** The Consultant shall immediately notify the City in writing if the Consultant experiences or anticipates experiencing a delay in performing the Services within the time frames set forth in the Time Schedule (Exhibit C). The written notice shall include an explanation of the cause for, and a reasonable estimate of the length of the delay. If in the opinion of the City, the delay affects a material part of the City's requirements for the Services, the City may exercise its rights under Sections 2.5-2.7 of this Agreement.

**2.4 Delay.** If delays in the performance of the Services are caused by unforeseen events beyond the control of the Parties, such delay may entitle the Consultant to a reasonable extension of time, but such delay shall not entitle the Consultant to damages or additional compensation. Any such extension of time must be approved in writing by the City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the Consultant's work; inability to obtain materials, equipment, or labor; required additional Services; or other specific reasons agreed to between the City and the Consultant; provided, however, that: (a) this provision shall not apply to, and the Consultant shall not be entitled to an extension of time for, a delay caused by the acts or omissions of the Consultant; and (b) a delay caused by the inability to obtain materials, equipment, or labor shall not entitle the Consultant to an extension of time unless the Consultant furnishes the City, in a timely manner, documentary proof satisfactory to City of the Consultant's inability to obtain materials, equipment, or labor.

**2.5 City's Right to Suspend for Convenience.** The City may, at its sole option and for its convenience, suspend all or any portion of the Consultant's performance of the Services, for a reasonable period of time not to exceed six months. In accordance with the provisions of this Agreement, the City will give written notice to the Consultant of such suspension. In the event of such a suspension, in accordance with the provisions of Article III of this Agreement, the City shall pay to the Consultant a sum equivalent to the reasonable value of the Services the Consultant has satisfactorily performed up to the date of suspension. Thereafter, the City may rescind such suspension by giving written notice of rescission to the Consultant. The City may then require the Consultant to resume performance of the Services in compliance with the terms and conditions of this Agreement; provided, however, that the Consultant shall be entitled to an extension of time equal to the length of the suspension, unless otherwise agreed to in writing by the Parties.

**2.6 City's Right to Terminate for Convenience.** The City may, at its sole option and for its convenience, terminate all or any portion of the Services agreed to pursuant to this Agreement by giving written notice of such termination to the Consultant. Such notice shall be

delivered by certified mail with return receipt for delivery to the City. The termination of the Services shall be effective upon receipt of the notice by the Consultant. After termination of this Agreement, the Consultant shall complete any and all additional work necessary for the orderly filing of documents and closing of the Consultant's Services under this Agreement. For services satisfactorily rendered in completing the work, the Consultant shall be entitled to fair and reasonable compensation for the Services performed by the Consultant before the effective date of termination. After filing of documents and completion of performance, the Consultant shall deliver to the City all documents or records related to the Consultant's Services. By accepting payment for completion, filing and delivering documents as called for in this paragraph, the Consultant discharges the City of all of the City's payment obligations and liabilities under this Agreement.

**2.7 City's Right to Terminate for Default.** If the Consultant fails to satisfactorily perform any obligation required by this Agreement, the Consultant's failure constitutes a Default. A Default includes the Consultant's failure to adhere to the Time Schedule. If the Consultant fails to satisfactorily cure a Default within ten calendar days of receiving written notice from the City specifying the nature of the Default, the City may immediately cancel and/or terminate this Agreement, and terminate each and every right of the Consultant, and any person claiming any rights by or through the Consultant under this Agreement. The rights and remedies of the City enumerated in this Section are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against the Consultant.

### **ARTICLE III COMPENSATION**

**3.1 Amount of Compensation.** The City shall pay the Consultant for performance of all Professional Services rendered in accordance with this Agreement, including reasonably related expenses, for a total contract amount not exceeding \$379,624. The compensation for the Scope of Services shall not exceed \$379,624, and the compensation for Additional Services (described in Section 3.2), if any, shall not exceed \$0.00.

**3.2 Additional Services.** The City may require that the Consultant perform additional Professional Services [Additional Services] beyond those described in the Scope of Services [Exhibit A]. Prior to the Consultant's performance of Additional Services, the City and the Consultant must agree in writing upon a fee for the Additional Services, including reasonably related expenses, in accordance with the Compensation and Fee Schedule (Exhibit B). The City will pay the Consultant for the performance of Additional Services in accordance with Section 3.3.

**3.3 Manner of Payment.** The City shall pay the Consultant in accordance with the Compensation and Fee Schedule (Exhibit B). For the duration of this Agreement, the Consultant shall not be entitled to fees, including fees for expenses, that exceed the amounts specified in the Compensation and Fee Schedule. The Consultant shall submit one invoice per calendar month in a form acceptable to City in accordance with the Compensation and Fee Schedule. The Consultant shall include with each invoice a description of completed Professional Services,

reasonably related expenses, if any, and all other information, including but not limited to: the progress percentage of the Scope of Services and/or deliverables completed prior to the invoice date, as required by the City. The City will pay undisputed portions of invoices within thirty calendar days of receipt.

**3.4 Additional Costs.** Additional Costs are those costs that can be reasonably determined to be related to the Consultant's errors or omissions, and may include Consultant, City, or Subcontractor overhead, construction, materials, demolition, and related costs. The Consultant shall not be paid for the Professional Services required due to the Consultant's errors or omissions, and the Consultant shall be responsible for any Additional Costs associated with such errors or omissions. These Additional Costs may be deducted from monies due, or that become due, the Consultant. Whether or not there are any monies due, or becoming due, the Consultant shall reimburse the City for Additional Costs due to the Consultant's errors or omissions.

**3.5 Eighty Percent Notification.** The Consultant shall promptly notify the City in writing of any potential cost overruns. Cost overruns include, but are not limited to the following: (1) where anticipated costs to be incurred in the next sixty calendar days, when added to all costs previously incurred, will exceed 80 percent of the maximum compensation for this Agreement; or (2) where the total cost for performance of the Scope of Services appears that it may be greater than the maximum compensation for this Agreement.

## **ARTICLE IV**

### **CONSULTANT'S OBLIGATIONS**

**4.1 Industry Standards.** The Consultant agrees that the Services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent environmental consulting firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. Where approval by the City, the Mayor or his designee, or other representatives of the City is required, it is understood to be general approval only and does not relieve the Consultant of responsibility for complying with all applicable laws, codes, and good consulting practices.

#### **4.2 Right to Audit.**

**4.2.1 Access.** The City retains the right to review and audit, and the reasonable right of access to Consultant's and any Subcontractor's premises to review and audit the Consultant's or Subcontractor's compliance with the provisions of this Agreement [City's Right]. The City's Right includes the right to inspect and photocopy same, and to retain copies, outside of the Consultant's premises, of any and all records related to the Services provided hereunder with appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion. This information shall be kept by the City in the strictest confidence allowed by law.

**4.2.2 Audit.** The City's Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the City determines are necessary to discover and verify that the Consultant or Subcontractor is in compliance with all requirements under this Agreement.

**4.2.2.1 Cost Audit.** If there is a claim for additional compensation or for Additional Services, the City's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the City determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

**4.2.2.1.1 Accounting Records.** The Consultant and all subcontractors shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. The Consultant and Subcontractors shall make available to the City for review and audit, all Service related accounting records and documents, and any other financial data. Upon the City's request, the Consultant and Subcontractors shall submit exact duplicates of originals of all requested records to the City.

**4.2.3 City's Right Binding on Subcontractors.** The Consultant shall include the City's Right as described in Section 4.2, in any and all of their subcontracts, and shall ensure that these sections are binding upon all Subcontractors.

**4.2.4 Compliance Required before Mediation or Litigation.** A condition precedent to proceeding with mandatory mediation and further litigation provided for in Article VII is the Consultant's and Subcontractors full compliance with the provisions of this Section 4.2 within sixty days of the date on which the City mailed a written request to review and audit compliance.

**4.3 Insurance.** The Consultant shall not begin the Services under this Agreement until it has: (a) obtained, and provided to the City, insurance certificates reflecting evidence of all insurance as set forth herein; however, the City reserves the right to request, and the Consultant shall submit, copies of any policy upon reasonable request by the City; (b) obtained City approval of each company or companies as required in Section 4.3.3 of this Agreement; and (c) confirmed that all policies contain the specific provisions required in Section 4.3.4 of this Agreement. Consultant's liabilities, including but not limited to Consultant's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement and Consultant's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by the City.

Further, the Consultant shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the duration of this Agreement.

**4.3.1 Types of Insurance.** At all times during the term of this Agreement, the Consultant shall maintain insurance coverage as follows:

**4.3.1.1 Commercial General Liability.** Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$1 million per occurrence and subject to an annual aggregate of \$2 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

**4.3.1.2 Commercial Automobile Liability.** For all of the Consultant's automobiles including owned, hired and non-owned automobiles, the Consultant shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

**4.3.1.3 Workers' Compensation.** For all of the Consultant's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Consultant shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and the Consultant shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

**4.3.1.4 Professional Liability.** For all of the Consultant's employees who are subject to this Agreement, the Consultant shall keep in full force and effect, Professional Liability coverage for professional liability with a limit of \$1 million per claim and \$2 million annual aggregate. The Consultant shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of the Project; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Project or termination of this Agreement whichever occurs last. The Consultant agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the City's exposure to loss.

**4.3.2 Deductibles.** All deductibles on any policy shall be the responsibility of the Consultant and shall be disclosed to the City at the time the evidence of insurance is provided.

**4.3.3 Acceptability of Insurers.**

**4.3.3.1** Except for the State Compensation Insurance Fund, all insurance required by this Contract or in the Special General Conditions shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the City.

**4.3.3.2** The City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance

carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

#### **4.3.4 Required Endorsements**

The following endorsements to the policies of insurance are required to be provided to the City before any work is initiated under this Agreement.

##### **4.3.4.1 Commercial General Liability Insurance Endorsements**

**ADDITIONAL INSURED.** To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

**PRIMARY AND NON-CONTRIBUTORY COVERAGE.** The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of Consultant's insurance and shall not contribute to it.

##### **4.3.4.2 Automobile Liability Insurance Endorsements**

**ADDITIONAL INSURED.** To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of the Consultant.

##### **4.3.4.3 Worker's Compensation and Employer's Liability Insurance Endorsements**

**WAIVER OF SUBROGATION.** The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the City.

**4.3.5 Reservation of Rights.** The City reserves the right, from time to time, to review the Consultant's insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to the City. The City will reimburse the Consultant for the cost of the additional premium for any coverage requested by the City in excess of that required by this Agreement without overhead, profit, or any other markup.



**4.3.6 Additional Insurance.** The Consultant may obtain additional insurance not required by this Agreement.

**4.3.7 Excess Insurance.** All policies providing excess coverage to the City shall follow the form of the primary policy or policies including but not limited to all endorsements.

**4.4 Subcontractors.** The Consultant's hiring or retaining of any third parties [Subcontractors] to perform Services [Subcontractor Services] is subject to prior approval by the City. The Consultant shall list on the Subcontractor List [Exhibit D Attachment BB] all Subcontractors known to the Consultant at the time this Agreement is entered. If at any time after this Agreement is entered into the Consultant identifies a need for additional Subcontractor Services, the Consultant shall give written notice to the City of the need, at least forty-five days before entering into a contract for such Subcontractor Services. The Consultant's notice shall include a justification, a description of the scope of work, and an estimate of all costs for the Subcontractor Services. The Consultant may request that the City reduce the forty-five day notice period. The City agrees to consider such requests in good faith.

**4.4.1 Subcontractor Contract.** All contracts entered into between the Consultant and any Subcontractor shall contain the information as described in Sections 4.6 and 4.7, and shall also provide as follows:

**4.4.1.1** Each Subcontractor shall obtain insurance policies which shall be kept in full force and effect during any and all work on this Agreement. Each Subcontractor shall obtain, and the Consultant shall require the Subcontractor to obtain, all policies described in Section 4.3.1.

**4.4.1.2** The Consultant is obligated to pay the Subcontractor, for Consultant and City-approved invoice amounts, out of amounts paid by the City to the Consultant, not later than fourteen working days from the Consultant's receipt of payment from the City. Nothing in this paragraph shall be construed to impair the right of the Consultant and any Subcontractor to negotiate fair and reasonable pricing and payment provisions among themselves.

**4.4.1.3** In the case of a deficiency in the performance of Subcontractor Services, the Consultant shall notify the City in writing of any withholding of payment to the Subcontractor, specifying: (a) the amount withheld; (b) the specific cause under the terms of the subcontract for withholding payment; (c) the connection between the cause for withholding payment and the amount withheld; and (d) the remedial action the Subcontractor must take in order to receive the amount withheld. Once the Subcontractor corrects the deficiency, the Consultant shall pay the Subcontractor the amount withheld within fourteen working days of the Consultant's receipt of the City's next payment.

**4.4.1.4** In any dispute between the Consultant and Subcontractor, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The Consultant agrees to defend and indemnify the City as described in Article VI of this Agreement

in any dispute between the Consultant and Subcontractor should the City be made a party to any judicial or administrative proceeding to resolve the dispute in violation of this position.

**4.4.1.5** The Subcontractor is bound to the City's Equal Opportunity Contracting Program covenants set forth in Article IV, Section 4.6 and Exhibit D of this Agreement.

**4.4.1.6** The City is an intended beneficiary of any work performed by the Subcontractor for purposes of establishing a duty of care between the Subcontractor and the City.

**4.5 Contract Activity Report.** The Consultant shall submit statistical information to the City as requested in the City's Contract Activity Report [Exhibit D Attachment CC]. The statistical information shall include the amount of subcontracting provided by firms during the period covered by the Contract Activity Report. With the Contract Activity Report, the Consultant shall provide an invoice from each Subcontractor listed in the report. The Consultant agrees to issue payment to each firm listed in the Report within fourteen working days of receiving payment from the City for Subcontractor Services as described in Section 4.4.1.

#### **4.6 Non-Discrimination Requirements.**

**4.6.1 Compliance with the City's Equal Opportunity Contracting Program.** The Consultant shall comply with the City's Equal Opportunity Contracting Program Consultant Requirements [Exhibit D]. The Consultant shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Consultant shall provide equal opportunity in all employment practices. The Consultant shall ensure that its Subcontractors comply with the City's Equal Opportunity Contracting Program Consultant Requirements. Nothing in this Section shall be interpreted to hold the Consultant liable for any discriminatory practice of its Subcontractors.

**4.6.2 Non-Discrimination Ordinance.** The Consultant shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of Subcontractors, vendors or suppliers. The Consultant shall provide equal opportunity for Subcontractors to participate in subcontracting opportunities. The Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. This language shall be in contracts between the Consultant and any Subcontractors, vendors and suppliers.

**4.6.3 Compliance Investigations.** Upon the City's request, the Consultant agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all Subcontractors, vendors, and suppliers that the Consultant has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the Consultant for each subcontract or supply contract. The Consultant further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517.] The Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Consultant up to and including contract termination, debarment, and other sanctions for violation of the

provisions of the Nondiscrimination in Contracting Ordinance. The Consultant further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

**4.7 Drug-Free Workplace.** The Consultant agrees to comply with the City's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference. The Consultant shall certify to the City that it will provide a drug-free workplace by submitting a Consultant Certification for a Drug-Free Workplace form [Exhibit E ].

**4.7.1 Consultant's Notice to Employees.** The Consultant shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition.

**4.7.2 Drug-Free Awareness Program.** The Consultant shall establish a drug-free awareness program to inform employees about all of the following:

**4.7.2.1** The dangers of drug abuse in the work place.

**4.7.2.2** The policy of maintaining a drug-free work place.

**4.7.2.3** Available drug counseling, rehabilitation, and employee assistance programs.

**4.7.2.4** The penalties that may be imposed upon employees for drug abuse violations.

**4.7.3 Posting the Statement.** In addition to Section 4.7.1 above, the Consultant shall post the drug-free policy in a prominent place.

**4.7.4 Subcontractor's Agreements.** The Consultant further certifies that each contract for Subcontractor Services for this Agreement shall contain language that binds the Subcontractor to comply with the provisions of Article IV, Section 4.7 of this Agreement, as required by Sections 2.A.(1) through (3) of Council Policy 100-17. Consultants and Subcontractors shall be individually responsible for their own drug-free work place program.

**4.8 Product Endorsement.** The Consultant acknowledges and agrees to comply with the provisions of City of San Diego Administrative Regulation 95.65, concerning product endorsement. Any advertisement identifying or referring to the City as the user of a product or service requires the prior written approval of the City.

**4.9 Conflict of Interest.** The Consultant is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et. seq. and 81000, et. seq., and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code at sections 27.3501 to 27.3595.

**4.9.1** If, in performing the Services set forth in this Agreement, the Consultant makes, or participates in, a “governmental decision” as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the department's conflict of interest code, the Consultant shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the Consultant's relevant financial interests. The determination as to whether any individual members of the Consultant's organization must make disclosures of relevant financial interests is set forth in the Determination Form (Exhibit I).

**4.9.1.1** Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. The Consultant shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that the Consultant is subject to a conflict of interest code. The Consultant shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the Consultant was subject to a conflict of interest code.

**4.9.1.2** If the City requires the Consultant to file a statement of economic interests as a result of the Services performed, the Consultant shall be considered a “City Official” subject to the provisions of the City of San Diego Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Agreement.

**4.9.2** The Consultant shall establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships.

**4.9.3** The Consultant's personnel employed for the Services shall not accept gratuities or any other favors from any Subcontractors or potential Subcontractors. The Consultant shall not recommend or specify any product, supplier, or contractor with whom the Consultant has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

**4.9.4** If the Consultant violates any conflict of interest law or any of the provisions in this Section 4.9, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects the Consultant to liability to the City for attorneys fees and all damages sustained as a result of the violation.

**4.10 Mandatory Assistance.** If a third party dispute or litigation, or both, arises out of, or relates in any way to the Services provided under this Agreement, upon the City's request, the Consultant, its agents, officers, and employees agree to assist in resolving the dispute or litigation. The Consultant's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

**4.11 Compensation for Mandatory Assistance.** The City will compensate the Consultant for fees incurred for providing Mandatory Assistance as Additional Services under Section 3.3. If, however, the fees incurred for the Mandatory Assistance are determined, through

resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of the Consultant, its agents, officers, and employees, the Consultant shall reimburse the City. The City is then entitled to reimbursement of all fees paid to the Consultant, its agents, officers, and employees for Mandatory Assistance.

**4.12 Attorney Fees related to Mandatory Assistance.** In providing the City with dispute or litigation assistance, the Consultant or its agents, officers, and employees may incur expenses and/or costs. The Consultant agrees that any attorney fees it may incur as a result of assistance provided under Section 4.11 are not reimbursable. The Parties agree this provision does not in any way affect their rights to seek attorney fees under Article VIII, Section 8.8 of this Agreement.

**4.13 Notification of Increased Construction Cost.** If applicable, at any time prior to the City's approval of the final plans, specifications, studies, or report, the Consultant anticipates that the total construction cost will exceed the estimated construction budget, the Consultant shall immediately notify the City in writing. This written notification shall include an itemized cost estimate and a list of recommended revisions which the Consultant believes will bring the construction cost to within the estimated construction budget. The City may either: (1) approve an increase in the amount authorized for construction; or (2) delineate a project which may be constructed for the budget amount; or (3) any combination of (1) and (2).

**4.14 ADA Certification.** The Consultant hereby certifies that it agrees to comply with the City's Americans With Disabilities Act Compliance/City Contracts requirements set forth in Council Policy 100-04, adopted by San Diego Resolution R-282153 and incorporated into this Agreement by this reference.

## **ARTICLE V**

### **RESERVED**

## **ARTICLE VI**

### **INDEMNIFICATION**

**6.1 Indemnification and Hold Harmless Agreement.** With respect to any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the Consultant, or Consultant's employees, agents, and officers, arising out of any services performed under this Agreement, the Consultant agrees to defend, indemnify, protect, and hold harmless the City, its agents, officers, and employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Consultant, its employees, agents or officers, or any third party. The Consultant's duty to defend, indemnify,

protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City, its agents, officers or employees.

## **ARTICLE VII**

### **MEDIATION**

**7.1 Mandatory Non-binding Mediation.** With the exception of Sections 2.5-2.7 of this Agreement, if a dispute arises out of, or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, prior to the initiation of any litigation, the Parties agree to attempt to settle the dispute in an amicable manner, using mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association [AAA] or any other neutral organization agreed upon before having recourse in a court of law.

**7.2 Mandatory Mediation Costs.** The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator [Mediator], and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by the Parties, unless they agree otherwise.

**7.3 Selection of Mediator.** A single Mediator that is acceptable to both Parties shall be used to mediate the dispute. The Mediator will be knowledgeable in construction aspects and may be selected from lists furnished by the AAA or any other agreed upon Mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing Party. If the Mediator is selected from a list provided by AAA, the initiating Party shall concurrently file with AAA a "Request for Mediation" along with the appropriate fees, a list of three requested Mediators marked in preference order, and a preference for available dates.

**7.3.1** If AAA is selected to coordinate the mediation [Administrator], within ten working days from the receipt of the initiating Party's Request for Mediation, the opposing Party shall file the following: a list of preferred Mediators listed in preference order after striking any Mediators to which they have any factual objection, and a preference for available dates. If the opposing Party strikes all of initiating Party's preferred Mediators, opposing Party shall submit a list of three preferred Mediators listed in preference order to initiating Party and Administrator. Initiating Party shall file a list of preferred Mediators listed in preference order, after striking any Mediator to which they have any factual objection. This process shall continue until both sides have agreed upon a Mediator.

**7.3.2** The Administrator will appoint or the Parties shall agree upon the highest, mutually preferred Mediator from the individual Parties' lists who is available to serve within the designated time frame.

**7.3.3** If the Parties agree not to use AAA, then a Mediator, date and place for the mediation shall be mutually agreed upon.

**7.4 Conduct of Mediation Sessions.** Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

**7.4.1** Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

**7.4.2** Any agreements resulting from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

## **ARTICLE VIII**

### **INTELLECTUAL PROPERTY RIGHTS**

**8.1 Work For Hire.** All original designs, plans, specifications, reports, documentation, and other informational materials, whether written or readable by machine, originated or prepared exclusively for the City pursuant to this Agreement (Deliverable Materials) is "work for hire" under the United States Copyright law and shall become the sole property of the City. The Consultant, including its employees, and independent Subcontractor(s), shall not assert any common law or statutory patent, copyright, trademark, or any other intellectual proprietary right to the City to the deliverable Materials.

**8.2. Rights in Data.** All rights (including, but not limited to publication(s), registration of copyright(s), and trademark(s) in the Deliverable Materials, developed by the Consultant, including its employees, agents, talent and independent Subcontractors pursuant to this Agreement are the sole property of the City. The Consultant, including its employees, agents, talent, and independent Subcontractor(s), may not use any such Product mentioned in this article for purposes unrelated to Consultant's work on behalf of the City without prior written consent of the City.

**8.3 Intellectual Property Rights Assignment.** Consultant, its employees, agents, talent, and independent Subcontractor(s) agree to promptly execute and deliver, upon request by City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials; and cooperate and assist in the prosecution of any action or opposition proceeding involving said rights and any adjudication of the same.

**8.4 Moral Rights.** Consultant, its employees, agents, talent, and independent Subcontractor(s) hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Deliverable Materials which Consultant, its employees, agents, talent, and independent Subcontractor(s), may now have or which may accrue to Consultant, its employees, agents, talent, and independent Subcontractor(s)' benefit under U.S. or foreign copyright laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. The term "Moral Rights" shall mean any and all rights of paternity or integrity in or to the Deliverable Materials and the right to object to any modification, translation or use of said content, and any similar rights existing under judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

**8.5 Subcontracting.** In the event that Consultant utilizes a Subcontractor(s) for any portion of the Work that is in whole or in part of the specified Deliverable(s) to the City, the agreement between Consultant and the Subcontractor [Subcontractor Agreement] shall include a statement that identifies that the Deliverable/Work product as a "work-for hire" as defined in the Act and that all intellectual property rights in the Deliverable/Work product, whether arising in copyright, trademark, service mark or other belongs to and shall vest solely with the City. Further, the Subcontractor Agreement shall require that the Subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to the City, all titles, rights and interests in and to said Work/Deliverable, including all copyrights and other intellectual property rights. City shall have the right to review any Subcontractor agreement for compliance with this provision.

**8.6 Publication.** Consultant may not publish or reproduce any Deliverable Materials, for purposes unrelated to Consultant's work on behalf of the City without prior written consent of the City.

**8.7 Intellectual Property Warranty and Indemnification.** Consultant represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this contract are either original, not encumbered and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Consultant to produce, at Consultant's own expense, new non-infringing materials, deliverables or Works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Consultant further agrees to indemnify and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages of any type alleging or threatening that any materials, deliverables, supplies, equipment, services or Works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claims of Infringement). If a Third Party Claim of Infringement is threatened or made before Consultant receives payment under this contract, City shall be entitled, upon written notice to Consultant, to withhold some or all of such payment.



**8.8 Enforcement Costs.** The Consultant agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in Article 8, including but not limited to, attorney's fees.

**8.9 Ownership of Documents.** Once the Consultant has received any compensation for the Professional Services performed under this Agreement, all documents, including but not limited to, original plans, maps, studies, sketches, drawings, computer printouts and disk files, and specifications prepared in connection with or related to the Scope of Services or Professional Services, shall be the property of the City.

## ARTICLE IX

### MISCELLANEOUS

**9.1 Notices.** In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement. For the purpose of this Agreement, unless otherwise agreed in writing, notice to the City shall be addressed to: City Planning & Community Investment Department, City Administration Building, 202 C Street, 4<sup>th</sup> floor, San Diego, CA 92101, Attn: Sara Lyons, MS 4A, phone: 619-236-6368 and notice to the Consultant shall be addressed to: Helix Environmental Planning, Inc., attention: Bruce McIntyre, 7578 El Cajon Boulevard, suite 200, La Mesa, CA 91942.

**9.2 Headings.** All article headings are for convenience only and shall not affect the interpretation of this Agreement.

**9.3 Non-Assignment.** The Consultant shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without the City's prior written approval. Any assignment in violation of this paragraph shall constitute a Default and is grounds for immediate termination of this Agreement, at the sole discretion of the City. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee.

**9.4 Independent Contractors.** The Consultant and any Subcontractors employed by the Consultant shall be independent contractors and not agents of the City. Any provisions of this Agreement that may appear to give the City any right to direct the Consultant concerning the details of performing the Services, or to exercise any control over such performance, shall mean only that the Consultant shall follow the direction of the City concerning the end results of the performance.

**9.5 Consultant and Subcontractor Principals for Consultant Services.** It is understood that this Agreement is for unique Professional Services. Retention of the Consultant's Professional Services is based on the particular professional expertise of the following members of the Consultant's organization: Bruce McIntyre, Alex John, Charles Terry, Dennis Marcin, Greg Mason, Michael Slavick, Stacy Gomez, Stacy Nigro, Tim Belzman [Project Team].

Accordingly, performance of Professional Services on the Project may not be delegated to other members of the Consultant's organization or to Subcontractors without the prior written consent of the City. It is mutually agreed that the members of the Project Team are the principal persons responsible for delivery of all Professional Services and may not be removed from the Project without the City's prior written approval. Removal of any member of the Project Team without notice and approval by the City may be considered a default of the terms and conditions of this Agreement by the Consultant. In the event any member of the Project Team becomes unavailable for any reason, the City must be consulted as to any replacement. If the City does not approve of a proposed replacement, the City may terminate this Agreement pursuant to section 2.6 of this Agreement. Further, the City reserves the right, after consultation with the Consultant, to require any of the Consultant's employees or agents to be removed from the Project.

**9.6 Covenants and Conditions.** All provisions of this Agreement expressed as either covenants or conditions on the part of the City or the Consultant, shall be deemed to be both covenants and conditions.

**9.7 Compliance with Controlling Law.** The Consultant shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement. In addition, the Consultant shall comply immediately with all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

**9.8 Jurisdiction and Attorney Fees.** The jurisdiction and applicable laws for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in accordance with the laws of the State of California. The prevailing Party in any such suit or proceeding shall be entitled to a reasonable award of attorney fees in addition to any other award made in such suit or proceeding.

**9.9 Successors in Interest.** This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.

**9.10 Integration.** This Agreement and the Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, amendment, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties. All prior negotiations and agreements are merged into this Agreement.

**9.11 Counterparts.** This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

**9.12 No Waiver.** No failure of either the City or the Consultant to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of

this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect without respect to any existing or subsequent breach.

**9.13 Severability.** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

**9.14 Additional Consultants or Contractors.** The City reserves the right to employ, at its own expense, such additional Consultants or contractors as the City deems necessary to perform work or to provide the Services.

**9.15 Employment of City Staff.** This Agreement may be unilaterally and immediately terminated by the City, at its sole discretion, if the Consultant employs an individual who, within the last twelve months immediately preceding such employment did, in the individual's capacity as an officer or employee of the City, participate in, negotiate with, or otherwise have an influence on the recommendation made to the City Council or Mayor in connection with the selection of the Consultant.

**9.16 Municipal Powers.** Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.

**9.17 Drafting Ambiguities.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

**9.18 Signing Authority.** The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

**9.19 Conflicts Between Terms.** If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

**9.20 Consultant Evaluation.** City will evaluate Consultant's performance of Services using the Consultant Evaluation Form (Exhibit F).

**9.21 Exhibits Incorporated.** All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

**9.22 Survival of Obligations.** All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with this Agreement, as well as all continuing obligations indicated in this Agreement, shall survive, completion and acceptance of the Professional Services and termination or completion of the Agreement.

**9.23 Vendor Registration.** All consultants, subconsultants, contractors, subcontractors and vendors wishing to conduct business with the City of San Diego, or those intending to compete for City contracts, must submit a completed Vendor Registration Form (Exhibit G) to the City of San Diego's Purchasing & Contracting Department.

Registration will be a prerequisite for the following:

- a) Submission of contract or subcontract proposals for City projects,
- b) Acceptance of all consultant and vendor bills and invoices to the City, and
- c) Award of all contracts issued by the City.

Contractor/Vendor Registration shall remain valid for 2 years from the date the registration form is submitted, and must be renewed at the time.

It shall be the Prime Consultant's responsibility to ensure that all its proposed subcontractors submit the Contractor/Vendor Registration form prior to the award of the agreement. Electronic copy of the Contractor/Vendor Registration form is available for download from the following site: <http://www.sandiego.gov/purchasing/vendor/index.shtml>.

**9.24 Contractor Standards.** This Agreement is subject to the Contractor Standards clause of the Municipal Code Chapter 2, Article 2, Division 32 adopted by Ordinance No. O-19383. All consultants are required to complete the Contractor Standards Pledge of Compliance included herein as (Exhibit H). The Contractor Standards are available online at [www.sandiego.gov/purchasing/vendor/index.shtml](http://www.sandiego.gov/purchasing/vendor/index.shtml) or by request from the Purchasing & Contracting Department by calling (619) 236-6000.

**9.25 Equal Benefits Ordinance.** This Agreement is subject to the Equal Benefits Ordinance [EBO]. All consultants are required to complete the Equal Benefits Ordinance Certification of Compliance included herein as Exhibit J. Effective January 1, 2011, any contract awarded from this solicitation is subject to the City of San Diego's Equal Benefits Ordinance [EBO], Chapter 2, Article 2, Division 43 of the San Diego Municipal Code [SDMC].

In accordance with the EBO, contractors must certify they will provide and maintain equal benefits as defined in SDMC §22.4302 for the duration of the contract [SDMC §22.4304(f)]. Failure to maintain equal benefits is a material breach of the contract [SDMC §22.4304(e)]. Contractors must notify employees of their equal benefits policy at the time of hire and during open enrollment periods and must post a copy of the following statement in an area frequented by employees:

During the performance of a contract with the City of San Diego, this employer will provide equal benefits to its employees with spouses and its employees with domestic partners.

Contractors also must give the City access to documents and records sufficient for the City to verify the contractors are providing equal benefits and otherwise complying with EBO requirements. Full text of the EBO and the Rules Implementing the Equal Benefits Ordinance are posted on the City's website at [www.sandiego.gov/purchasing/](http://www.sandiego.gov/purchasing/) or can be requested from the Equal Benefits Program at (619) 533-3948.

*The remainder of this page has intentionally been left blank.*

**IN WITNESS WHEREOF**, this Agreement is executed by the City of San Diego, acting by and through its Mayor, pursuant to Resolution No: \_\_\_\_\_, authorizing such execution, and by the Consultant pursuant to Signature Authority (i.e., Certificate of Secretary) Document. .

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

THE CITY OF SAN DIEGO  
Mayor or Designee

By \_\_\_\_\_

I HEREBY CERTIFY I can legally bind HELIX Environmental Planning, Inc. and that I have read all of this Agreement, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

By \_\_\_\_\_

Bruce McIntyre  
HELIX Environmental Planning, Inc.

I HEREBY APPROVE the form and legality of the foregoing Agreement this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

JAN I. GOLDSMITH, City Attorney

By \_\_\_\_\_

Nina M. Fain, Deputy City Attorney

## **CONSULTANT AGREEMENT EXHIBITS**

- Exhibit A - Scope of Services
- Exhibit B - Compensation and Fee Schedule
- Exhibit C - Time Schedule
- Exhibit D - City's Equal Opportunity Contracting Program Consultant Requirements
  - (AA) Work Force Report
  - (BB) Subcontractors List
  - (CC) Contract Activity Report
- Exhibit E - Consultant Certification for a Drug-Free Workplace
- Exhibit F - Consultant Evaluation Form
- Exhibit G - Vendor Registration Form
- Exhibit H - Contractor Standards Pledge of Compliance
- Exhibit I - Determination Form
- Exhibit J- Equal Benefits Ordinance Certification of Compliance

## SCOPE OF SERVICES

HELIX will assume primary responsibility for preparation of the Program Environmental Impact Report (PEIR) for the San Ysidro Community Plan Update (SYCPU). The major tasks associated with this work will include preparation of the Draft and Final PEIR containing all information required by CEQA Guidelines section 15120. Secondary tasks include preparation of the following documents: (1) Scoping Letter, (2) technical reports related to air quality, biology, geology, greenhouse gas (GHG) emissions, hazardous materials, hydrology, noise, public utilities, water supply, and water quality (3) a Mitigation Monitoring and Reporting Program (MMRP), and (4) Candidate Findings for each significant impact (Findings) and Statement of Overriding Considerations (SOC) in accordance with CEQA section 21081 and CEQA Guidelines sections 15091 and 15093.

In preparing the PEIR, HELIX will conduct the level of analysis that is appropriate to the level of information available regarding the SYCPU. The analysis of the SYCPU will, by necessity, be qualitative. In evaluating impacts for the SYCPU, HELIX will utilize the realistic development scenarios developed by RRM, in consultation with the City, to avoid over-estimating project impacts and mitigation requirements. Mitigation measures associated with the SYCPU will be defined to a level sufficient to demonstrate their ability to reduce impacts and will include performance standards to guide application to subsequent development projects. The PEIR will distinguish between plan-wide mitigation measures and those which should be implemented by specific development activities.

Throughout the process, HELIX will emphasize constant communication with the City and its planning team to ensure that information is exchanged quickly and accurately. HELIX will work with City staff throughout the CEQA process, including: (1) obtaining relevant information/input for preparation of the PEIR; (3) comprehensively identifying the large-scale impacts of plan implementation to minimize future CEQA compliance requirements (e.g., providing air quality, GHG and growth inducement conclusions that can be relied upon in future CEQA reviews); (4) identifying effective, feasible mitigation measures that can be applied to future specific development proposals; (5) responding to public comments; and (6) attending public meetings, workshops, and hearings.

The work associated with each of the tasks associated with preparing the PEIR follows.

### **Task 1.0 Technical Studies**

The following technical studies will be prepared by the HELIX team to provide technical support for specific environmental issues.

In order to assist in the preparation of the Community Plan Update, the HELIX team will accelerate their work in specific issue areas to provide baseline information for consideration



in the planning process. Initial baseline information will be assembled with regard to: air quality, GHG emissions, biology, geology, hazardous materials, hydrology, public utilities (water/sewer), and noise.

### ***Subtask 1.1 Air Quality***

HELIX will prepare an air quality analysis that will focus on the criteria pollutants of greatest concern in the San Diego Air Basin (SDAB) including ozone precursors (volatile organic compounds [VOCs] and oxides of nitrogen [NO<sub>x</sub>]), carbon monoxide (CO), sulfur dioxide (SO<sub>2</sub>), inhalable particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>), and carbon dioxide (CO<sub>2</sub>).

The analysis will include a description of the existing conditions and the current air quality regulatory environment. The air toxics pollutants of concern within the Community Plan Area, and their known health effects, will also be described. The existing state and federal ambient air quality standards, the SDAB's attainment status with regard to those standards, and applicable County of San Diego Air Pollution Control District Rules and Regulations and Regional Air Quality Strategy (RAQS) Plan will be summarized.

The impacts discussion will begin with a description of the methodology used to estimate criteria and air toxics emission impacts. Criteria and thresholds for determining the significance for air quality impacts, using the City of San Diego's CEQA Significance Thresholds, if acceptable to the District, will be identified as a guide for the assessment of impacts.

The primary focus of the analysis will be on criteria pollutants generated by mobile sources associated with buildout under the proposed SYCPU. Other sources to be considered will include stationary sources such as energy production. The analysis will assess potential criteria pollutant emissions, including emissions of ozone precursors (NO<sub>x</sub> and VOCs), CO, PM<sub>10</sub>, PM<sub>2.5</sub>, and SO<sub>x</sub>. Estimates will be based on traffic volumes projected in the traffic analysis prepared by the City's traffic consultant as well as an estimate of the vehicle miles traveled. Short-term emissions resulting from construction associated with future development pursuant to the proposed SYCPU will be addressed qualitatively.

A qualitative evaluation of potential health risks and objectionable odors associated with the existing uses and proposed uses within the Community Plan Area on sensitive receptors (i.e., residences, hospitals, schools, parks) will also be prepared.

The analysis will include identification of mitigation measures which could be included in subsequent development to reduce criteria pollutants. The potential environmental effects of goals, objectives and/or policies associated with the proposed SYCPU, as well as the City's General Plan, will be evaluated.

Lastly, HELIX will conduct a consistency analysis to determine if the proposed SYCPU conforms to the RAQS Plan in accordance with the procedures set forth by CARB.

The results of the analysis will be included in a technical report to be provided within the appendices of the PEIR.

### ***Subtask 1.2 Greenhouse Gas Emissions Analysis***

HELIX will prepare an analysis of potential GHG emissions related to implementation of the proposed SYCPU. The analysis will utilize the work anticipated to be completed as a part of the Barrio Logan, Otay Mesa, and Ocean Beach community plan update environmental documents, as well as the work that will be underway for the City's Climate Mitigation and Adaptation Plan (CMAP) to provide an overview of: (1) existing GHG levels on a local, state and federal level, (2) predicted emissions and impacts globally and within California, (3) the current regulatory regime in California and the U.S. (including a summary of the City's policy framework for controlling and reducing GHG emissions by the milestone year 2020), and (4) expected future actions of the state/CARB in regulation of GHG emissions. Significance criteria recommended by City staff will serve as the threshold for evaluating the potential environmental impacts of the proposed SYCPU.

HELIX will use the citywide GHG inventory prepared as a part of the update to the city's CMAP as a baseline, and calculate the incremental contribution to the inventory that is anticipated to result for the update to the San Ysidro Community Plan. San Ysidro's additional GHG emissions will be calculated based on information, methodologies, and emission factors recommended by City staff, to be consistent with what was used for the City's CMAP update. GHG emissions will be calculated based on the anticipated buildout of the Community Plan under two scenarios. The first scenario, referred to as "business as usual" (BAU), will be estimated in order to assess the ability of the proposed SYCPU to meet the GHG reductions required by AB 32, which requires GHG emissions to be reduced to year 1990 state-wide levels by 2020. The second scenario will include the effect on GHG emissions of state and federal auto emission regulations and energy conservation measures mandated by Title 24 subsequent to 2008.

In addition to identifying impacts associated with the project's GHG emissions, HELIX will qualitatively discuss potential impacts of climate change on the environment within the Community Plan Area, including the potential changes in hydrology (precipitation, flooding events, etc.), public health (heat stress, increased ozone exceedances), and water supply (changes in Sierra snowpack, availability of water, etc.).

Work on a citywide Climate Mitigation and Adaptation Plan (CMAP) is currently underway and is anticipated to be completed prior to adoption of the SYCPU. The analysis will discuss how the measures included (or anticipated to be included) in the CMAP are applied in the SYCPU, and discuss any additional measures or SYCPU policies that may serve to achieve further reductions, as needed. Such measures may include: (1) reduction of urban heat, (2) water and energy conservation strategies, (3) energy efficiency standards and green building incentives, (4) renewable energy programs and incentives, (5) public transportation, bicycle, and pedestrian infrastructure, (6) retrofit of existing buildings for increased energy efficiency, and/or (7) urban infill and diversity of land uses.

The results of the GHG analysis will be presented in a technical report for inclusion in the PEIR.

### ***Subtask 1.3 Biological Resources***

HELIX biologists will review existing documents and recent aerial imagery online to ascertain the extent of any biological resources currently within the Community Planning Area to establish the baseline conditions. Observed resources will be mapped using the aerial imagery and presented on a general vegetation map of the Community Planning Area. A field trip will be conducted to verify the composition, extent and condition of biological resources identified from aerial imagery. Based on the field visit, corrections will be made to the biological resource base map. Sensitive biological resources will be plotted on the base map based on literature review and suitability of habitat. No specific surveys for sensitive plants or animals will be undertaken as part of this scope.

HELIX biologists will review the proposed SYCPU and identify any potential impacts which could occur with respect to sensitive biological resources from its implementation including direct, indirect, and cumulative impacts. Potential indirect impacts to biological resources associated with the Tijuana River will be addressed and appropriate mitigation measures and Community Plan goals, objectives and/or policies will be recommended.

The analysis will identify local and state ordinances and laws which protect sensitive biological resources (e.g., City MSCP, state NCCP, and state and federal endangered species laws). The potential for development pursuant to the proposed SYCPU to conflict with the goals and regulations established by these laws and policies will be evaluated.

Conceptual mitigation measures available to reduce impacts of subsequent development will be identified but detailed mitigation formulation is not included in this scope of work.

The results of the analysis will be summarized in a separate report for inclusion in the PEIR appendices.

### ***Subtask 1.4 Hazardous Materials***

An Environmental Data Resources (EDR) Area Study of the Community Plan area shall be completed. The study will include a search of pertinent Federal, State and local regulatory agency database records. The review will also include historical land use information from readily available public records such as old business directories, Sanborn Fire Insurance maps, and historical aerial photographs. For the purpose of this project, the database search will be limited to the community plan area.

Results of the database search will be utilized to identify hazardous materials known to exist within the community plan area and discuss the potential for unidentified hazardous materials to exist within the community plan area. A preliminary field visit will be conducted to important hazardous materials sites identified during the database research to ascertain their present condition and potential for health risk. In addition, a summary will be provided of the local, state and federal laws and regulations governing hazardous materials along with typical remediation measures.

The results of the analysis will be summarized in a separate report for inclusion in the PEIR.

#### ***Subtask 1.5 Hydrology***

Existing hydrologic-related information regarding the community of San Ysidro and the Tijuana River watershed will be reviewed, such as: "Water Quality Control Plan for the San Diego Basin (9)" (Basin Plan), Clean Water Act Section 303(d) List, Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRMs), City of San Diego existing storm drain information, United States Geological Survey (USGS) maps, and other sources as available.

The results of the literature review will be summarized and will identify applicable drainage design standards within the City of San Diego as well as Federal Emergency Management Agency (FEMA) requirements. Existing conditions within the Community Plan Area will be described in terms of levels of imperviousness, drainage flow patterns, and type of storm water conveyance systems.

The proposed SYCPU will be reviewed and shall identify any potential impacts which could occur with respect to hydrology. Policy-level mitigation will be identified and/or generic mitigation measures and regulatory controls available to reduce impacts of subsequent development will be identified.

The results of the analysis will be summarized in a separate report for inclusion in the PEIR appendices.

#### ***Subtask 1.6 Water Quality***

Existing water quality information regarding the community of San Ysidro and the Tijuana River watershed shall be reviewed, such as: "Water Quality Control Plan for the San Diego Basin (9)" (Basin Plan), Clean Water Act Section 303(d) List, City of San Diego existing storm drain information, and other sources, as available.

Results of the literature review will be summarized and shall identify applicable water quality regulations within the City of San Diego as well as State requirements. Existing water quality conditions within the community plan area will be described.

The proposed SYCPU will be reviewed and identify any potential impacts which could occur with respect to hydrology and/or water quality. Policy-level mitigation will be identified and/or generic remedial measures and regulatory controls available to reduce impacts of subsequent development will be identified.

The results of the analysis will be summarized in a technical report for inclusion in the PEIR appendices.

#### ***Subtask 1.7 Public Utilities***

Consultant will work with Metropolitan Waste Water Department and the Water Department to identify the existing water and sewer serving the community plan area. This research will be

based on a review of review existing reports and information. The analysis will focus on existing conditions including known deficiencies. Based on the changes in land use expected to occur with the proposed Update, Rick Engineering will provide a programmatic evaluation of the ability of the existing water and sewer systems to handle the increased demand. Due to the inability to predict where new development will occur, this evaluation will be based on a generalized analysis of the existing systems capacity and potential impacts due to increased demands. This evaluation will be based on a programmatic approach/analysis only and will not include detailed system analyses of individual or localized pipe segments.

#### ***Subtask 1.8 Water Supply Assessment***

In order to evaluate the potential impact of the proposed project on local and regional water supply, consultant, will consult with the Public Utilities Department, review the Urban Water Management Plan, and identify existing water supply entitlements, water rights, and service contracts to establish a baseline for water supply. The assessment will evaluate water demand for near term and build out under the updated community plan and identify near and long term water supply sources. Based on the additional demand created by land use changes included in the community plan update, the assessment will discuss the ability of the future local, regional and state water supply sources to meet the needs of the SYCPU area as well as reasonably foreseeable development in the water supplier's service area. If adequate supplies do not currently exist, the assessment will identify future sources, explain what actions would be necessary to develop them, and the likelihood of the sources being available. The assessment will identify the potential environmental impacts of developing future water sources as well as mitigation measures for any significant environmental impacts of developing future water supplies.

#### ***Subtask 1.9 Noise***

HELIX will prepare a noise analysis of the proposed SYCPU. To create a baseline, HELIX will take measurements of ambient noise levels at up to 10 locations within the Community Plan Area and will determine the location and extent of noise problems in the community using a survey or other appropriate method. Existing noise sources within the Community Plan Area will be identified along with areas which are considered sensitive to excessive noise. Existing City, state and federal ordinances and regulations governing noise will be summarized.

The analysis will consider the effect of stationary- and mobile-source noise related to the proposed SYCPU on existing and proposed noise-sensitive receptors (e.g. residences, convalescent homes, medical, educational, religious, sensitive wildlife habitat, and recreational uses). The analysis will assess and describe the existing and projected sources of environmental noise relative to the SYCPU. Mobile source noise will focus on automobile, freight trains, transit (e.g. buses and trolley), and aircraft. Stationary noise sources to be considered will include manufacturing, loading docks and heating, air conditioning and ventilation (HVAC) systems. The analysis will focus on potential conflicts between increased development along community transportation corridors and proximity to potentially adverse noise levels.

Based on the updated traffic study, HELIX will conduct an analysis of projected future traffic noise along 24 roadway segments. A Traffic Noise Model (TNM) will be developed and calibrated against the measured sound level data. The future 60 and 65 CNEL contours associated with major roads will be plotted on a Community Plan base map along with any other major mobile or stationary noise sources (e.g., highways, freeways, primary arterials and major local streets, railroad operations, ground rapid transit, aviation flights and operations, and industrial operations). The map will show existing and projected land uses and the locational relationship to existing and proposed noise sources. This information will be used to identify potential exterior and interior noise impacts on existing and proposed land uses. Mitigation measures and/or design guidelines will be provided to reduce noise levels in noise-sensitive areas.

The findings of the analysis will be summarized in a report for inclusion in the PEIR.

#### ***Subtask 1.10 Geology***

Consultant will prepare a “desktop geology study”. The desk-top study will summarize regional and local geology and identify potential geologic hazards (tsunami, liquefaction, faults) and describe measures available to mitigate the hazards or alternatives to avoid hazards. A geologic map of the San Ysidro Community will be included in the desk top study. The map will show the distribution of surficial deposits and geologic units, as well as geologic structures, such as faults. A map will also be presented that shows areas of potential geologic hazards such as areas prone to soil liquefaction, landsliding, etc. The study will be prepared as a stand-alone report attached as an appendix to the EIR.

The findings of the analysis will be summarized in a report for inclusion in the PEIR.

## **2.0 Draft PEIR**

Preparation of the Draft PEIR will include three screencheck versions, a pre-print proof copy, and the version to be circulated for public review. The PEIR will follow the standards for content and format defined in the City’s EIR Guidelines. To define the appropriate scope of the EIR, HELIX will work with City staff to develop a scoping letter for inclusion in the Notice of Preparation to be prepared by the City.

### **Executive Summary**

The Executive Summary will provide an overview of the essential elements of the PEIR. For easy reference, the impacts and corresponding mitigation measures will be summarized in tabular form for each of the projects, including a clear statement as to whether the impacts can be reduced to below a level of significance. Alternatives considered in the PEIR will be summarized and compared with the proposed SYCPU.

### **Introduction**

The proposed Community Plan Update with a brief description of the intended use and purpose of the PEIR. It will briefly describe the proposed Community Plan Update and identify any subsequent discretionary City actions/permits, including the update to the Community Plan and zone changes. The Introduction will also discuss how the PEIR will be used for subsequent

approvals and/or environmental documents, and will describe the parameters for the future use of the PEIR. It will also discuss the relationship between the City's General Plan and EIR, and future projects within the Community Plan Area.

### Environmental Setting

The environmental setting will describe the physical features of the San Ysidro community. This section will discuss the project's effect on the need for public facilities, including the Fire Department's five-minute emergency services response time, and the Police Department's goal of a seven-minute response time for priority calls. This section will also describe the community's geographic proximity to adjacent communities. In addition, existing biology, archaeology, geology, and other relevant information will be discussed in this section. Existing land use designations, zoning, and development will be identified, including the San Ysidro Port-of-Entry and related uses.

### Project Description

The project description will introduce the general purpose and features associated with the proposed update for the San Ysidro Community Plan. It will contain a summary description of the elements of the Community Plan Update and explain the relationship between the General Plan and Community Plan. It will define the context and provide specific information about the characteristics, goals and objectives of the plan update. This section will also contain tables and figures showing project data that illustrates the goals and objectives of the plan update. A description of the discretionary action(s) involved in the plan update shall be included as well as a list of the requirements for approval from federal, state and local agencies.

### History of Project Changes

The History of Project Changes will describe any changes made during the Community Plan Update process in response to environmental concerns raised regarding the Community Plan Update, including any input received from the Planning Commission and City Council committees.

### Environmental Analysis

The Environmental Analysis will be the heart of the PEIR. Each issue area will be addressed separately and will include the following subsections: Existing Conditions, Thresholds of Significance, Summary of Impacts, Significance of Impacts and Mitigation Measures.

Based on plan update implementation programs, mitigation measures will be identified in terms of who is responsible for implementation, when the mitigation measure is to be implemented, how the measure will be implemented, and design guidelines to reduce the impact to below a level of significance

Based on our past experience and the issues identified in the RFP scope of work, the scope of the environmental analysis is described below.

**Air Quality.** This section will be based on the Air Quality Study prepared by HELIX, which is described in Task 1.0 of this scope.

**Biological Resources.** This section will be based on the Biological Resources Report prepared by HELIX, which is described in Task 1.0 of this scope.

**Energy.** This section will discuss the demand for energy related to the proposed Community Plan Update. Energy consumption estimates will be taken from the GHG analysis. The section will evaluate the effectiveness of the project in reducing inefficient, wasteful and unnecessary consumption of energy. The ability of gas and electric providers to meet the anticipated demand will be discussed. Measures included in the Community Plan Update to reduce energy consumption will be identified.

**Geologic Conditions.** This section will summarize the “desktop geology study”, which is described in Task 1.0 of this scope.

**Greenhouse Gas Emissions.** This section will be based on the GHG analysis prepared by HELIX, which is described in Task 1.0 of this scope.

**Health and Safety.** This section will be based on the EDR Area Study, which is described in Task 1.0 of this scope.

**Historic Resources.** This section will be based on the Historical Resources Reconnaissance and Archaeology Study prepared by the City’s consultant. The City’s standard mitigation measures for monitoring and salvaging significant historic resources will be included.

**Hydrology and Water Quality.** This section will be based on the Hydrology and Water Quality Reports , which are described in Task 1.0 of this scope.

**Land Use.** This section will evaluate the relationship of the proposed Community Plan Update to the various local, state and federal plans, ordinances or policies that apply to the Community Plan Area, as well as the potential for the planned land uses to conflict with existing and planned development. Existing conditions will be established, including a description of existing land use patterns. In addition, local, state and federal plans, ordinances and regulations that govern land use within the community will be summarized, including the City’s General Plan, Land Development Code and Multiple Species Conservation Plan, as well as SANDAG’s Regional Comprehensive Plan. In evaluating land use policy impacts, the analysis will focus on the relationship of the proposed Community Plan Update to the plans, ordinances and policies that are related to environmental resources. In addition, this section will discuss the relationship of the proposed Community Plan Update with the General Plan policies. If potential inconsistencies with adopted plans are identified that would create environmental impacts, the Land Use section will describe whether or not these potential impacts would lead to physical effects. This section will also assess proposed policies in the General Plan regarding the village growth strategy, and identify potential impacts if the community is not meeting public facilities guidelines or acceptable levels of service, as identified in the General Plan.

**Mineral Resources.** This section will discuss existing mineral resources in the plan update area and the extent to which implementation of the plan update could result in the loss of



availability of mineral resources. The potential for important mineral resources to occur within the Plan area will be based on existing published and unpublished literature, including the geologic literature cited above, CDMG County Report No. 3, Mines and Mineral Resources of San Diego County, California (1963); CDMG Special Report 153, Mineral Land Classification: Aggregate Materials in the Western San Diego County Production-Consumption Region (1982); and CDMG Open-File Report 96-04, Update of Mineral Land Classification: Aggregate Materials in the Western San Diego County Production-Consumption Region (1999).

**Noise.** This section will be based on a Noise Report prepared by HELIX, which is described in Task 1.0 of this scope.

**Paleontological Resources.** HELIX will identify geologic formations which have moderate to high potential for containing significant paleontological resources. The City's standard mitigation measures for monitoring and salvaging significant paleontological resources will be included.

**Population and Housing.** This section will discuss on the potential changes in population and housing that may occur from implementation of the proposed SYCPU. This section will also analyze any potential employment growth from SYCPU implementation and the associated influences on population. The relationship of proposed housing and jobs within the SYCPU and immediate surrounding area will be evaluated to determine whether an imbalance could occur.

**Public Services and Facilities.** HELIX will obtain information from the agencies responsible for providing the following services to the Community Plan Update area: police protection, fire protection, emergency medical service, libraries, and schools. To the extent available, HELIX will utilize public service information recently collected in the course of updating the Community Plan by RRM. Based on the available information, HELIX will describe: (1) current facilities and staffing, (2) future plans for facilities and staff, and (3) potential effects upon public services from future development pursuant to the proposed Community Plan Update. Working with the service providers, HELIX will identify mitigation measures available to reduce potential impacts on public services. In accordance with current DSD policy, the focus of the analysis will be on the potential for adverse impacts on service levels to result in new construction that would have a physical impact on the environment.

**Public Utilities.** This section will focus on utilities related to energy, sewer, solid waste and water service. The evaluation of sewer and water infrastructure as well as water supply will be based on the evaluation completed by Rick Engineering, which is described in Task 1.0 of this scope. This section will begin with a description of the existing infrastructure related to these utilities. Based on the land use changes anticipated with implementation of the proposed Community Plan Update, this section will qualitatively discuss the potential change in demand for these utilities. In addition, this section will address proposed provisions and policies in the Community Plan Update that address energy conservation and resource consumption.

**Recreation.** This section will be based on information provided by the City on the existing recreational facilities within the City and the SYCPU. The section will discuss existing

recreation facilities relative to the current population in San Ysidro, and whether implementation of the proposed land use changes and policies could adversely impact the ability of the City to provide adequate levels of recreation to the San Ysidro community in the future. The analysis will evaluate the potential for an imbalance to occur between the available supply of recreational opportunities and the demand for recreation, resulting in local inadequacies and potentially result in pressure for conversion of other uses to recreation within or near the San Ysidro community, that would have a physical impact on the environment beyond that accommodated within the SYCPU.

***Transportation, Traffic Circulation and Parking.*** This section will be based on the Mobility Analysis and Traffic Study prepared by the City's consultant. Based on this study, this section will summarize the existing traffic and transit conditions within the Community Plan area. Using the impact analysis contained in the technical report, the potential impacts of the proposed Community Plan Update on pedestrian, transit (light rail and bus), vehicular (automobiles and trucks), and bicycle travel and parking throughout San Ysidro would be evaluated. The effect of the project on daily vehicle miles travelled will be discussed. Based on the technical report, the mitigation section will identify roadway improvements or other measures that are available to reduce impacts related to transportation, traffic circulation and parking.

***Visual Effects and Neighborhood Character.*** This section will include a general description of the built and natural visual resources within the Community Plan Area, and will assess the role of the plan update in addressing these visual and neighborhood character issues. Although it is anticipated that the proposed SYCPU will have an overall positive impact on the visual and neighborhood character, this section will discuss visual resources within the community and the protection of public views, scenic vistas and landmarks as well as neighborhood character issues. Potential changes in building height and massing will be addressed, based on any changes in allowable building heights and development intensities pursuant to the proposed SYCPU. Appropriate measures from the SYCPU and other recommendations that would reduce or eliminate potential significant impacts of future development will be identified.

#### **Other Required Considerations**

***Cumulative Impacts.*** The PEIR will discuss how implementation of the proposed Community Plan Update could result in significant environmental changes that are individually limited, but cumulatively considerable. This section will discuss how the implementation of the SYCPU could result in significant environmental changes, which are individually limited but cumulatively considerable, in accordance with Section 15130 of the CEQA Guidelines. As the project is a plan-level project, the cumulative analysis will rely on local and regional planning documents to evaluate potential cumulative impacts, rather than a specific list of projects.

***Effects Found Not To Be Significant.*** The PEIR will discuss issues for which no significant impacts are anticipated. The justification for these findings will be summarized in the PEIR.

***Significant Environmental Effects.*** Based on the preceding environmental analysis, this section of the PEIR will summarize the anticipated significant impacts for which measures

have been identified to fully mitigate the significant effects. The justification for such findings will be summarized in the PEIR.

***Significant Environmental Effects That Cannot Be Avoided.*** The PEIR will summarize any identified significant impacts for which mitigation measures would not be sufficient to reduce impacts to below a level of significance.

***Significant Irreversible Environmental Effects.*** The PEIR will contain additional analysis per conformance with CEQA Guidelines. Specifically, this section will discuss those significant environmental effects that cannot be avoided, and significant irreversible changes that would result from implementation of the proposed project.

***Growth Inducement.*** This section will discuss ways in which the proposed SYCPU could encourage or accommodate economic or population growth, or construction of additional housing, either directly or indirectly. Cross-border implications will be addressed to the extent that this analysis is supported by available documentation from SANDAG. Potential effects of the proposed project on growth in surrounding communities will also be evaluated. SYCPU policies, regional plans, and/or regulations that would reduce growth-inducing impacts will be presented, if necessary. If it is determined, in consultation with the City, that the environmental effects of growth inducement from implementation of the proposed SYCPU would be significant and unmitigated, this issue will be fully addressed within the PEIR, Findings and a Statement of Overriding Considerations, with the goal of covering these impacts at the program level so that specific future developments within the SYCPU would not require separate EIRs and Statements of Overriding Considerations for this issue.

***Project Alternatives.*** It is anticipated that up to three land use alternatives will be developed in cooperation with the City and its planning team to form the basis of the alternatives analysis for the SYCPU. A qualitative discussion of the impacts of these land use alternatives, when compared with those of the proposed SYCPU would be included in this section. The No Project alternative will be addressed as well. As appropriate, alternatives considered but rejected will be discussed to fully inform the public and decision makers of the process that went into development of the proposed plan, and the reasons that certain alternatives that may have been preferred by others were not carried forward.

#### ***Subtask 4.1 First Screencheck Draft PEIR***

Based on the PEIR content described above, HELIX will prepare a first screencheck version of the Draft PEIR for review and comment by the City.

#### ***Subtask 2.2 Second Screencheck Draft PEIR***

Based on comments received from the City on the first screencheck Draft PEIR, HELIX will prepare a second screencheck Draft PEIR for review and comment by the City and RRM.

### ***Subtask 2.3 Third Screencheck Draft PEIR***

Based on comments received from the City on the second screencheck Draft PEIR, HELIX will prepare a third screencheck Draft PEIR for the City to review before production of the public review draft.

### ***Subtask 2.4 Pre-print Draft PEIR***

Based on comments received from the City and RRM on the third screencheck Draft PEIR, HELIX will prepare a pre-print Draft PEIR for the City to review before production of the public review draft.

### ***Subtask 2.4 Public Review Draft PEIR***

HELIX will incorporate minor changes identified by the City in their review of the pre-print Draft PEIR and finalize the Draft PEIR for public review.

The Public Review Draft PEIR will be provided to the City in electronic form as well as printed copies.

### **Task 3.0 Final PEIR**

The Final PEIR will include the Draft PEIR and any changes to it, responses to all comments received on the Draft PEIR, a list of persons, organizations and public agencies commenting on the Draft PEIR, and any relevant or supporting information. The Final PEIR will also include preparation of Candidate Findings (Findings), Statement of Overriding Considerations (SOC) and a Mitigation, Monitoring and Reporting Program (MMRP).

As required by CEQA, HELIX will prepare written Responses to Comments (RTC) received during the public review period. In preparing the RTC, HELIX will work closely with the City to develop clear, concise and reasoned responses supported by factual evidence in accordance with CEQA Guidelines section 15088. For purposes of budgeting, it is assumed that responses will be based on existing information, without the need for any new technical analysis or substantial research.

The Findings and SOC will follow the format and style generally accepted by the City. This scope specifically excludes any economic analysis associated with demonstrating the infeasibility of mitigation measures and/or alternatives identified in the PEIR or demonstrating the overriding considerations related to economics.

The MMRP will summarize all mitigation measures identified in the PEIR. It will be designed to serve as a mitigation checklist for use in identifying those measures which are the City's responsibility and those to be implemented by subsequent development.

### ***Subtask 3.1 First Screencheck Final PEIR***

HELIX will prepare responses to comments received on the Draft PEIR as well as make any modifications to the text of the Draft PEIR which may be warranted on the basis of those responses. HELIX will also prepare initial versions of the Findings, SOC and MMRP. These documents will be submitted to the City for review and comment.

### ***Subtask 3.2 Second Screencheck Final PEIR***

Based on comments received from the City on the elements of the first screencheck Final PEIR, HELIX will prepare a second screencheck Final PEIR for review and comment by the City and RRM.

### ***Subtask 3.3 Third Screencheck Final PEIR***

Based on comments received from the City on the second screencheck Final PEIR, HELIX will prepare a third screencheck Final PEIR for City to review before production of the final version of the Final PEIR.

### ***Subtask 3.4 Final PEIR***

HELIX will incorporate minor changes identified by the City in their review of the Third Screencheck Final PEIR and finalize the Final PEIR for certification.

The Final PEIR will be provided to the City in electronic form as well as printed copies.

## **Task 4.0 Meetings and Hearings**

HELIX will attend: (1) up to 15 meetings with City staff, (2) one public scoping meeting, (3) four community meetings, and (4) five public hearings. HELIX's Project Manager will attend all of these meetings and hearings. In addition, limited hours are included for key subconsultants to attend meetings and hearings. Three hours are assumed for each meeting, four hours for the scoping meeting, two hours for each community meeting, and eight hours for each public hearing, including driving time and preparation.

## **Task 5.0 Project Management**

HELIX will use a number of project management tools to ensure that projects are maintained on schedule and within budget. At the beginning of the project, the Project Manager will prepare and distribute a Project Team Roles and Responsibilities List which will identify the name, firm, role, phone, email, and responsibilities of each team member. Weekly conference calls will be scheduled, as needed, to promote communication between the City, its planning team and the HELIX Team. The Project Manager will provide a monthly status report to the City regarding tasks performed in the prior month and tasks that are anticipated to be performed in the next month. In addition, the monthly status report will identify any unresolved issues.

## Task 6.0 Reimbursable Expenses

HELIX will provide the City with printed and electronic copies of the screencheck and completed versions of the Draft and Final PEIR. Seventeen copies of each screencheck version of the Draft and Final PEIR will be produced. Twenty-five printed copies and 25 compact disk versions of the Draft PEIR will be prepared. Fifty printed copies and 50 compact disk versions of the Final PEIR will be prepared. In addition, HELIX will charge the City for mileage and other incidental expenses.

## ASSUMPTIONS

This Scope and Cost includes the following assumptions:

- No Initial Study will be prepared, since the decision has been made to prepare an EIR. Effects found not to be significant will be documented within the PEIR.
- The City will provide HELIX with current available digital baseline data for producing all maps and graphics, which should be submitted in one of the following formats: .dxf, .dwg (AutoCAD), .dgn (Microstation), .e00 (ArcInfo export coverages), or .shp (ArcView shapefiles). In some cases, .pdf files will be acceptable.
- Once preparation of the first administrative versions of technical reports and/or the Draft PEIR has begun, no changes to the project will occur which would result in major revisions to the project description or analysis of any environmental issue.
- HELIX is not responsible for the preparation of public notices, property owner mailing lists/labels, charges associated with the publication of notices in local newspapers, or document filing fees (such as County Clerk filing fees and California Department of Fish and Game environmental review filing fees). HELIX is not responsible for document distribution during public circulation.
- The Draft PEIR will consist of approximately 250 pages and 50 supporting graphics. The technical appendices will consist of approximately 500 pages with up to 10 color pages. The numbers of copies of deliverable documents included in the current cost estimate is specified in the scope of services.
- The scope of services related to the Findings and Statement of Overriding Considerations do not include generating supporting information for overriding considerations related to financial feasibility.
- The noise analysis will be based on an analysis of anticipated traffic levels along a theoretical roadway segment; it will not incorporate shielding due to area topography or structures.
- No testing or original research is included in the preparation of the “desktop geology study”.

- One set of revisions to each technical report are included within this scope of work.
- HELIX will prepare responses to up to 30 substantive comments contained within the comment letters.
- A single report for drainage and water quality shall be prepared.
- HELIX will prepare a single report for air quality and GHG.
- Project management time assumes the Final SEIR will be certified within 18 months after notice to proceed.
- Hazardous materials research will be limited to the EDR Area Study and will not be to level specified by the American Society for Testing & Materials (ASTM) standards for commercial real estate transactions (E1527-05 and E1528-06) or the All Appropriate Inquiry (AAI). Field reconnaissance of hazardous materials does not include the collection of soil and/or groundwater samples for analytical (chemical) testing.
- Public hearings regarding the environmental document will be held , and the City will supply any required audio-visual equipment. HELIX will not be required to provide interpretation (such as sign language or English/Spanish interpretation) or court reporter services.
- The hydrology services do not include discussion of groundwater hydrology, quantity, or quality except as available from existing sources such as the Basin Plan or the previous EIR that was prepared by the City of San Diego for a redevelopment area that covered the central portion of the community planning area in 1996. No measurement or sampling of groundwater will be conducted. o analysis of dam conditions, seiche, tsunami, or mudflow potential is included. The analysis will not include hydrologic, hydraulic or sediment transport calculations. No water sampling is included.

**EXHIBIT B****COMPENSATION AND FEE SCHEDULE**

<b>Task</b>	<b>Description</b>	<b>Cost (\$)</b>
1	Technical Studies	
	Air Quality/GHG	\$17,845
	Biological Resources	10,850
	Geology	12,500
	Hazardous Materials	32,070
	Hydrology/Water Quality	12,053
	Public Utilities	33,090
	Noise	15,858
2	Draft PEIR	129,220
3	Final PEIR	38,060
4	Meetings and Hearings	34,428
5	Project Management	22,750
6	Reimbursable Expenses	20,900
	<b>Total Cost</b>	<b>\$379,624</b>



**EXHIBIT C****TIME SCHEDULE**

<b>Task</b>	<b>Description</b>	<b>Date Start</b>	<b>Date Complete</b>
1	Technical Studies	June 2011	February 2012
1.1	Air Quality		
1.2	Greenhouse Gas (GHG) Emissions Analysis		
1.3	Biological Resources		
1.4	Hazardous Materials		
1.5	Hydrology		
1.6	Water Quality		
1.7	Public Utilities		
1.9	Noise		
2	Draft PEIR	May 2011	August 2012
3	Final PEIR	August 2012	January 2013

## EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)

## CONSULTANT REQUIREMENTS

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- I. City's Equal Opportunity Commitment.** The City of San Diego (City) is strongly committed to equal opportunity for employees and Subcontractors of Consultants doing business with the City. The City encourages its Consultants to share this commitment. Consultants are encouraged to take positive steps to diversify and expand their Subcontractor solicitation base and to offer consulting opportunities to all eligible Subcontractors. *Failure to submit the required EOCP documentation indicated below shall result in a determination of the Consultant being non-responsive.*
- II. Nondiscrimination in Contracting Ordinance.** All Consultants doing business with the City, and their Subcontractors, must comply with requirements of the City's *Nondiscrimination in Contracting Ordinance*, San Diego Municipal Code Sections 22.3501 through 22.3517.
- A. Proposal Documents to include Disclosure of Discrimination Complaints.** As part of its bid or proposal, Consultant shall provide to the City a list of all instances within the past ten (10) years where a complaint was filed or pending against Consultant in a legal or administrative proceeding alleging that Consultant discriminated against its employees, Subcontractors, vendors, or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.

- B. Contract Language. The following language shall be included in contracts for City projects between the Consultant and any Subcontractors, vendors, and suppliers:

Contractor shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. Consultant shall provide equal opportunity for Subcontractors to participate in opportunities. Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions.

- C. Contract Disclosure Requirements. Upon the City's request, Consultant agrees to provide to the City, within sixty (60) calendar days, a truthful and complete list of the names of all Subcontractors, vendors, and suppliers that Consultant has used in the past five (5) years on any of its contracts that were undertaken within County of San Diego, including the total dollar amount paid by Consultant for each subcontract or supply contract. Consultant further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance, Municipal Code Sections 22.3501 through 22.3517. Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Consultant up to and including contract termination, debarment and other sanctions.

III. **Equal Employment Opportunity Outreach Program**. Consultants shall comply with requirements of San Diego Municipal Code Sections 22.2701 through 22.2707. Consultants shall submit with their proposal a Work Force Report for approval by the Program Manager of the City of San Diego Equal Opportunity Contracting Program (EOCP).

- A. Nondiscrimination in Employment. Consultant shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Consultants shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a Consultant liable for any discriminatory practice of its subcontractors.
- B. Work Force Report. If based on a review of the Work Force Report (Attachment AA) submitted an EOCP staff Work Force Analysis determines there are under representations when compared to County Labor Force Availability data, then the Consultant will also be required to submit an Equal Employment Opportunity (EEO) Plan to the Program Manager of the City of San Diego Equal Opportunity Contracting Program (EOCP) for approval.
- C. Equal Employment Opportunity Plan. If an Equal Employment Opportunity Plan is required, the Program Manager of EOCP will provide a list of plan requirements to Consultant.

**IV. Small and Local Business Program Requirements.** The City has adopted a Small and Local Business Enterprise (SLBE) program for consultant contracts. SLBE program requirements for consultant contracts are set forth Council Policy 100-10.

**A. SLBE and ELBE Participation for Contracts Valued Over \$50,000:**

1. For proposals ranking as qualified or acceptable, or any higher ranking, the City shall apply a maximum of 12 additional points for SLBE or ELBE participation. Points will be awarded as follows:

- a. 20% participation – 5 points
- b. 25% participation – 10 points
- c. SLBE or ELBE as prime contractor – 12 points

2. All professional services contracts valued over \$50,000 or more have a voluntary SLBE/ELBE goal of 20%. For the purposes of this Council Policy, the subcontractor requirement may be met by a provider of materials or supplies. Details can be found at <http://www.sandiego.gov/eoc/boc/slbe.shtml>.

**B. Subcontractor Participation List.** The Subcontractor Participation List (Attachment BB) shall indicate the Name and Address, Scope of Work, Percent of Total Proposed Contract Amount, Certification Status and Where Certified for each proposed Subcontractor/Subconsultant.

**C. Commitment Letters.** Consultant shall also submit Subcontractor *Commitment Letters* on Subcontractor's letterhead, no more than one page each, from all proposed Subcontractors to acknowledge their commitment to the team, scope of work, and percent of participation in the project.

**D. Contract Activity Reports.** To permit monitoring of the winning Consultant's commitment to achieving compliance, *Contract Activity Reports* (Attachment CC) reflecting work performed by Subcontractors/Subconsultants/Vendors shall be submitted quarterly for any work covered under an executed contract.

**V. Demonstrated Commitment to Equal Opportunity.** The City seeks to foster a business climate of inclusion and to eliminate barriers to inclusion.

**A. Consultants are required to submit the following information with their proposals:**

- 1. **Outreach Efforts.** Description of Consultant's outreach efforts undertaken on this project to make subcontracting opportunities available to all interested and qualified firms including SLBE/ELBE/DBE/MBE/WBE/DVBE/OBE.
- 2. **Past Participation Levels.** Listing of Consultant's Subcontractor participation levels achieved on all private and public projects within the past three (3) years. Include name of project, type of project, value of project, Subcontractor firm's name, percentage of Subcontractor firm's participation, and identification of

Subcontractor firm's ownership as a certified Small or Emerging Local Business Enterprise, Woman Business Enterprise, Disadvantaged Business Enterprise, Disabled Veteran Business Enterprise, or Other Business Enterprise.

3. Equal Opportunity Employment. Listing of Consultant's strategies to recruit, hire, train and promote a diverse workforce. These efforts will be considered in conjunction with Consultant's *Workforce Report* as compared to the County's Labor Force Availability.
  4. Community Activities. Listing of Consultant's current community activities such as membership and participation in local organizations, associations, scholarship programs, mentoring, apprenticeships, internships, community projects, charitable contributions and similar endeavors.
- B. In accordance with the City's Equal Opportunity Commitment, the City will consider the four factors described above as part of the evaluation process. A maximum of 13 additional points will be awarded based on consideration of these four factors. Points awarded based on Consultants demonstrated commitment to equal opportunity will be in addition to any points awarded for SLBE or ELBE participation as described in Section IV.

## VI. Definitions.

Certified "**Minority Business Enterprise**" (MBE) means a business which is at least fifty-one percent (51%) owned by African Americans, American Indians, Asians, Filipinos, and/or Latinos and whose management and daily operation is controlled by one or more members of the identified ethnic groups. In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, one or more members of the identified ethnic groups.

Certified "**Women Business Enterprise**" (WBE) means a business which is at least fifty-one percent (51%) owned by one or more women and whose management and daily operation is controlled by the qualifying party(s). In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, one or more women.

Certified "**Disadvantaged Business Enterprise**" (DBE) means a business which is at least fifty-one percent (51%) owned and operated by one or more socially and economically disadvantaged individuals and whose management and daily operation is controlled by the qualifying party(s). In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, socially and economically disadvantaged individuals.

Certified "**Disabled Veteran Business Enterprise**" (DVBE) means a business which is at least fifty-one percent (51%) owned by one or more veterans with a service related disability and whose management and daily operation is controlled by the qualifying party(s).

**“Other Business Enterprise” (OBE)** means any business which does not otherwise qualify as Minority, Woman, Disadvantaged or Disabled Veteran Business Enterprise.

**Emerging Local Business Enterprise (ELBE)** – Any for-profit enterprise that is not a broker, that is independently owned and operated; that is not a subsidiary of another business; that meets the definition of a local business; and that is not dominant in its field of operation whose average gross annual receipts in the prior three fiscal years do not exceed:

- \$2.75 million – Construction
- \$1.5 million – Specialty Construction
- \$1.5 million – Goods/Materials/Services
- 1.0 million – Trucking
- \$750,000 – Professional Services and Architect/Engineering

If a business has not existed for 3 years, the gross sales limits described above shall be applied based upon the annual averages over the course of the existence of the business.

**Local Business Enterprise (LBE)** – A firm having a Principal Place of Business and a Significant Employment Presence in San Diego City or County, California that has been in operation for 12 consecutive months and a valid business tax certificate. This definition is subsumed within the definition of Small Local Business Enterprise.

**Small Local Business Enterprise (SLBE)** – Any for-profit enterprise that is not a broker, that is independently owned and operated; that is not a subsidiary of another business; that meets definition of a local business; and that is not dominant in its field of operation whose average gross annual receipts in the prior three fiscal years do not exceed:

- \$5.0 million – Construction
- \$3.0 million – Specialty Construction
- \$3.0 million – Goods/Materials/Services
- \$2.0 million – Trucking
- \$1.5 million – Professional Services and Architect/Engineering

California State certified Micro and Disabled Veteran Owned business enterprises shall also satisfy the requirements to be defined as a Small Business Enterprise.

If a business has not existed for 3 years, the employment and gross sales limits described above shall be applied based upon the annual averages over the course of the existence of the business.

#### **VIII. Certification.**

Below are the EOC – accepted certification agencies along with certifiable groups:

City of San Diego:

ELBE, SLBE

Caltrans:

DBE, SDBE, SWBE

Dept. of General Services:  
CA Public Utilities Commission:  
City of Los Angeles:  
SD Regional Minority Supplier Diversity Council:

DVBE  
MBE, WBE  
DBE, WBE, MBE  
MBE, WBE

**IX. List of Attachments.**

- AA. Work Force Report
- BB. Subcontractors List
- CC. Contract Activity Report

ATTORNEY CLIENT CONFIDENTIAL



City of San Diego.

ATTACHMENT AA

**EQUAL OPPORTUNITY CONTRACTING (EOC)**

1010 Second Avenue • Suite 500 • San Diego, CA 92101

Phone: (619) 533-4464 • Fax: (619) 533-4474

**WORK FORCE REPORT**

**ADMINISTRATIVE**

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report (WFR)*.

**CONTRACTOR IDENTIFICATION**

Type of Contractor: ☐ Construction ☐ Vendor/Supplier ☐ Financial Institution ☐ Lessee/Lessor  
☐ Consultant ☐ Grant Recipient ☐ Insurance Company ☐ Other

Name of Company: \_\_\_\_\_

AKA/DBA: \_\_\_\_\_

Address (Corporate Headquarters, where applicable): \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_ FAX Number: ( ) \_\_\_\_\_

Name of Company CEO: \_\_\_\_\_

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_ FAX Number: ( ) \_\_\_\_\_

Type of Business: \_\_\_\_\_ Type of License: \_\_\_\_\_

The Company has appointed: \_\_\_\_\_

as its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate, and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_ FAX Number: ( ) \_\_\_\_\_

- ☐ One San Diego County (or Most Local County) Work Force - Mandatory
- ☐ Branch Work Force \*
- ☐ Managing Office Work Force

*Check the box above that applies to this WFR.*

*\*Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

I, the undersigned representative of \_\_\_\_\_  
(Firm Name)

\_\_\_\_\_, \_\_\_\_\_ hereby certify that information provided  
(County) (State)

herein is true and correct. This document was executed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Print Authorized Signature)



**WORK FORCE REPORT – NAME OF FIRM:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**OFFICE(S) or BRANCH(ES):** \_\_\_\_\_ **COUNTY:** \_\_\_\_\_

**INSTRUCTIONS:** For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- |  |  |
|--|--|
| (1) Black, African-American                          | (5) Filipino                                       |
| (2) Hispanic, Latino, Mexican-American, Puerto Rican | (6) White, Caucasian                               |
| (3) Asian, Pacific Islander                          | (7) Other ethnicity; not falling into other groups |
| (4) American Indian, Eskimo                          |  |

OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Management & Financial														
Professional														
A&E, Science, Computer														
Technical														
Sales														
Administrative Support														
Services														
Crafts														
Operative Workers														
Transportation														
Laborers*														

\*Construction laborers and other field employees are not to be included on this page

Totals Each Column														
--------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Grand Total All Employees

Indicate by Gender and Ethnicity the Number of Above Employees Who Are Disabled

Disabled														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														



## CITY OF SAN DIEGO WORK FORCE REPORT – ADMINISTRATIVE

### HISTORY

The Work Force Report (WFR) is the document that allows the City of San Diego to analyze the work forces of all firms wishing to do business with the City. We are able to compare the firm's work force data to County Labor Force Availability (CLFA) data derived from the United States Census. CLFA data is a compilation of lists of occupations and includes the percentage of each ethnicity we track (Black, Hispanic, Asian, American Indian, Filipino) for each occupation. Currently, our CLFA data is taken from the 2000 Census. In order to compare one firm to another, it is important that the data we receive from the consultant firm is accurate and organized in the manner that allows for this fair comparison.

### WORK FORCE & BRANCH WORK FORCE REPORTS

When submitting a WFR, especially if the WFR is for a specific project or activity, we would like to have information about the firm's work force that is actually participating in the project or activity. That is, if the project is in San Diego and the work force is from San Diego, we want a San Diego County Work Force Report.<sup>1</sup> By the same token, if the project is in San Diego, but the work force is from another county, such as Orange or Riverside County, we want a Work Force Report from that county.<sup>2</sup> For example, if participation in a San Diego project is by work forces from San Diego County, Los Angeles County and Sacramento County, we will ask for separate Work Force Reports representing the work forces of

your firm from each of the three counties.<sup>1,2</sup> On the other hand, if the project will be accomplished completely outside of San Diego, we ask for a Work Force Report from the county or counties where the work will be accomplished.<sup>2</sup>

### MANAGING OFFICE WORK FORCE

Equal Opportunity Contracting may occasionally ask for a Managing Office Work Force (MOWF) Report. This may occur in an instance where the firm involved is a large national or international firm but the San Diego or other local work force is very small. In this case, we may ask for both a local and a MOWF Report.<sup>1,3</sup> In another case, when work is done only by the Managing Office, only the MOWF Report may be necessary.<sup>3</sup>

### TYPES OF WORK FORCE REPORTS:

Please note, throughout the preceding text of this page, the superscript numbers one <sup>1</sup>, two <sup>2</sup> & three <sup>3</sup>. These numbers coincide with the types of work force report required in the example. See below:

- <sup>1</sup> One San Diego County (or Most Local County) Work Force – Mandatory in most cases
- <sup>2</sup> Branch Work Force \*
- <sup>3</sup> Managing Office Work Force

*\*Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county*

### **Exhibit: Work Force Report Job categories**

Refer to this table when completing your firm's Work Force Report form(s).

#### **Management & Financial**

Advertising, Marketing, Promotions, Public Relations, and Sales Managers
Business Operations Specialists
Financial Specialists
Operations Specialties Managers
Other Management Occupations
Top Executives

#### **Professional**

Art and Design Workers
Counselors, Social Workers, and Other Community and Social Service Specialists
Entertainers and Performers, Sports and Related Workers
Health Diagnosing and Treating Practitioners
Lawyers, Judges, and Related Workers
Librarians, Curators, and Archivists
Life Scientists
Media and Communication Workers
Other Teachers and Instructors
Postsecondary Teachers

Primary, Secondary, and Special Education School Teachers
Religious Workers
Social Scientists and Related Workers

#### **Architecture & Engineering, Science, Computer**

Architects, Surveyors, and Cartographers
Computer Specialists
Engineers
Mathematical Science Occupations
Physical Scientists

#### **Technical**

Drafters, Engineering, and Mapping Technicians
Health Technologists and Technicians
Life, Physical, and Social Science Technicians
Media and Communication Equipment Workers

#### **Sales**

Other Sales and Related Workers
Retail Sales Workers
Sales Representatives, Services
Sales Representatives, Wholesale and Manufacturing
Supervisors, Sales Workers

#### **Administrative Support**

Financial Clerks
Information and Record Clerks
Legal Support Workers
Material Recording, Scheduling, Dispatching, and Distributing Workers
Other Education, Training, and Library Occupations
Other Office and Administrative Support Workers
Secretaries and Administrative Assistants
Supervisors, Office and Administrative Support Workers

#### **Services**

Building Cleaning and Pest Control Workers
Cooks and Food Preparation Workers
Entertainment Attendants and Related Workers
Fire Fighting and Prevention Workers
First-Line Supervisors/Managers, Protective Service Workers
Food and Beverage Serving Workers
Funeral Service Workers
Law Enforcement Workers
Nursing, Psychiatric, and Home Health Aides
Occupational and Physical Therapist Assistants and Aides
Other Food Preparation and Serving Related Workers
Other Healthcare Support Occupations
Other Personal Care and Service Workers
Other Protective Service Workers

Personal Appearance Workers
Supervisors, Food Preparation and Serving Workers
Supervisors, Personal Care and Service Workers
Transportation, Tourism, and Lodging Attendants

#### **Crafts**

Construction Trades Workers
Electrical and Electronic Equipment Mechanics, Installers, and Repairers
Extraction Workers
Material Moving Workers
Other Construction and Related Workers
Other Installation, Maintenance, and Repair Occupations
Plant and System Operators
Supervisors of Installation, Maintenance, and Repair Workers
Supervisors, Construction and Extraction Workers
Vehicle and Mobile Equipment Mechanics, Installers, and Repairers
Woodworkers

#### **Operative Workers**

Assemblers and Fabricators
Communications Equipment Operators
Food Processing Workers
Metal Workers and Plastic Workers
Motor Vehicle Operators
Other Production Occupations
Printing Workers
Supervisors, Production Workers
Textile, Apparel, and Furnishings Workers

#### **Transportation**

Air Transportation Workers
Other Transportation Workers
Rail Transportation Workers
Supervisors, Transportation and Material Moving Workers
Water Transportation Workers

#### **Laborers**

Agricultural Workers
Animal Care and Service Workers
Fishing and Hunting Workers
Forest, Conservation, and Logging Workers
Grounds Maintenance Workers
Helpers, Construction Trades
Supervisors, Building and Grounds Cleaning and Maintenance Workers
Supervisors, Farming, Fishing, and Forestry Workers

## SUBCONTRACTOR PARTICIPATION LIST

This list shall include the name and complete address of all Subcontractors who qualify as SLBEs or ELBEs. Contractors may also list participation by MBE, WBE, DBE, DBVE and OBE firms. However, no additional points will be awarded for participation by these firms, except that DVBEs that qualify as local businesses shall counted as SLBEs.

Contractor shall also submit Subcontractor commitment letters on Subcontractor's letterhead, no more than one page each, from Subcontractors listed below to acknowledge their commitment to the team, scope of work, and percent of participation in the project.

Subcontractors shall be used in the percentages listed. No changes to this Participation List will be allowed without prior written City approval.

NAME AND ADDRESS SUBCONTRACTORS	SCOPE OF WORK	PERCENT OF CONTRACT	SLBE/ELBE (* /MBE/ WBE/DBE/ DVBE/OBE)	** WHERE CERTIFIED

\* Listed for informational purposes only.

\*\* Consultant shall indicate if Subcontractor is certified by one of the agencies listed in Section VII of the Equal Opportunity Contracting Program (EOCP) Attachment.

List of Abbreviations:

Certified Minority Business Enterprise	MBE
Certified Woman Business Enterprise	WBE
Certified Disadvantaged Business Enterprise	DBE
Certified Disabled Veteran Business Enterprise	DVBE
Other Business Enterprise	OBE
Small Local Business Enterprise	SLBE
Emerging Local Business Enterprise	ELBE



## CONSULTANT CERTIFICATION FOR A DRUG-FREE WORKPLACE

PROJECT TITLE: \_\_\_\_\_

I hereby certify that I am familiar with the requirement of San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace as outlined in the request for proposals, and that:

\_\_\_\_\_  
Name under which business is conducted

has in place a drug-free workplace program that complies with said policy. I further certify that each subcontract agreement for this project contains language which indicates the Subconsultants agreement to abide by the provisions of Section 4.9.1 subdivisions A through C of the policy as outlined.

Signed \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**City of San Diego**  
**Consultant Performance Evaluation**

**EXHIBIT F**

The purpose of this form is to provide historical data to City staff when selecting consultants.

**Section I**

1. PROJECT DATA		2. CONSULTANT DATA	
1a. Project (title, location and CIP No.):		2a. Name and address of Consultant:	
1b. Brief Description:		2b. Consultant's Project Manager:	
1c. Budgeted Cost:		Phone (    )	
3. CITY DEPARTMENT RESPONSIBLE			
3a. Department (include division):		3b. Project Manager (address & phone):	
4. CONTRACT DATA (DESIGN AND CONSTRUCTION)			
<b>4. Design</b>			
4a. Agreement Date: _____		Resolution #: _____ \$ _____	
4b. Amendments: \$ _____ / # _____ (city)		\$ _____ / # _____ (consultant)	
4c. Total Agreement (4a. & 4b.): \$ _____			
4d. Type of Work (design, study, etc.):		4e. Key Contract Completion Dates:	
		<div style="display: flex; justify-content: space-between;"> <span>%</span> <span>%</span> <span>%</span> <span>%</span> <span>%</span> <span>100 %</span> </div> <div style="display: flex; justify-content: space-between;"> <span>Agreement</span> <span>_____</span> <span>_____</span> <span>_____</span> <span>_____</span> <span>_____</span> </div> <div style="display: flex; justify-content: space-between;"> <span>Delivery</span> <span>_____</span> <span>_____</span> <span>_____</span> <span>_____</span> <span>_____</span> </div> <div style="display: flex; justify-content: space-between;"> <span>Acceptance</span> <span>_____</span> <span>_____</span> <span>_____</span> <span>_____</span> <span>_____</span> </div>	
<b>5. Construction</b>			
5a. Contractor _____		Phone (    ) _____	
(name and address)			
5b. Superintendent _____			
5c. Notice to Proceed _____ (date)		5f. Change Orders: Errors/Omissions _____ % of const. cost \$ _____ Unforeseen Conditions _____ % of const. cost \$ _____ Changed Scope _____ % of const. cost \$ _____ Changes Quantities _____ % of const. cost \$ _____ Total Construction Cost \$ _____	
5d. Working days _____ (number)			
5e. Actual Working days _____ (number)			
6. OVERALL RATING (Please ensure Section II is completed)			
		Excellent	Satisfactory
6a. Plans/specification accuracy.....		_____	_____
Consistency with budget.....		_____	_____
Responsiveness to City Staff.....		_____	_____
6b. Overall Rating _____			
7. AUTHORIZING SIGNATURES			
7a. Project Manager _____		Date _____	
7b. Deputy Director _____		Date _____	

PLANS / SPECIFICATION ACCURACY	EXCELLENT	SATISFACTORY	POOR	N/A	RESPONSIVENESS TO STAFF	EXCELLENT	SATISFACTORY	POOR	N/A
Plan/Specification clear and precise					Timely Responses				
Plans/Specs Coordination					Attitude toward Client and review bodies				
Plans/Specs properly formatted					Follows direction and chain of responsibility				
Code Requirements covered					Work product delivered on time				
Adherence to City Standard Drawings/Specs					Timeliness in notifying City of major problems				
Drawings reflect existing conditions					Resolution of Field problems				
As-Built Drawings					CONSISTENCY WITH BUDGET	EXCELLENT	SATISFACTORY	POOR	N/A
Quality Design					Reasonable Agreement negotiation				
Change Orders due to design deficiencies are minimized					Adherence to fee schedule				
					Adherence to project budget				
					Value Engineering Analysis				

### Section III

### SUPPLEMENTAL INFORMATION

Please ensure to attach additional documentation as needed.

Item \_\_\_\_\_ : \_\_\_\_\_

Item \_\_\_\_\_ : \_\_\_\_\_

Item \_\_\_\_\_ : \_\_\_\_\_

Item \_\_\_\_\_ : \_\_\_\_\_

Item \_\_\_\_\_ : \_\_\_\_\_

Item \_\_\_\_\_ : \_\_\_\_\_

(\*Supporting documentation attached yes \_\_\_\_\_ no \_\_\_\_\_)



CONTRACTOR / VENDOR  
REGISTRATION FORM

ATTORNEY CLIENT CONFIDENTIAL



**City of San Diego**  
**Purchasing & Contracting Department**  
**Contractor/Vendor Registration Form**

All prospective bidders, as well as existing contractors and vendors, are required to complete this form.

Vendor ID: \_\_\_\_\_

[ID Number will be provided by City]

**Firm Info:**

Firm Name: \_\_\_\_\_

Doing Business As: \_\_\_\_\_

Firm Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Taxpayer ID: \_\_\_\_\_

Business License: \_\_\_\_\_

Website: \_\_\_\_\_

**Contact Info:**

Contact Name: \_\_\_\_\_

Title: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

Cell: \_\_\_\_\_

☐ **Alternate Address** (if different from above) **to Receive Remittance:**

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip: \_\_\_\_\_

☐ **Alternate Address** (if different from above) **to Receive Bid/Contract Opportunities:**

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip: \_\_\_\_\_

**Contractor Licenses** (if applicable)

License Number: \_\_\_\_\_

License Type: \_\_\_\_\_

License Number: \_\_\_\_\_

License Type: \_\_\_\_\_

License Number: \_\_\_\_\_

License Type: \_\_\_\_\_

**Contractor/Vendor Registration Form – Page 2**

**Firm Name:**

**Product/Services Description:**

**Product/Services Information:**

**NIGP Codes:**

\*find list of available NIGP Codes at <http://www.sandiego.gov/purchasing> OR request hard copy from Purchasing & Contracting

**The City requires this information for statistical purposes only.**

**Primary Owner of the Firm**  
(51% ownership or more)

☐ Male  
☐ Female or

- ☐ Sole Proprietorship
- ☐ Partnership
- ☐ Corporation
- ☐ Limited Liability Partnership
- ☐ Limited Liability Corporation
- ☐ Joint Venture
- ☐ Non-Profit
- ☐ Governmental/Municipality/Regulatory Agency
- ☐ Utility

**Ethnicity:**

**Ethnicity:**

\* select one from the following **List of Ethnicities:**

AFRICAN AMERICAN

ASIAN AMERICAN

CAUCASIAN AMERICAN

HISPANIC AMERICAN

NATIVE AMERICAN

PACIFIC ISLANDER AMERICAN

## Ownership Classification

Classification:

\*

\* select from the following **List of Ownership Classification Codes** (select all that apply):

WBE	(Woman Owned Business Enterprise)
OBE	(Other Business Enterprise)
DBE	(Disadvantaged Business Enterprise)
DVBE	(Disabled Veteran Business Enterprise)
SLBE	(Small Local Business Enterprise)
8(a)	(Small Business Administration 8(a) Enterprise)
SDB	(Small Disadvantaged Business Enterprise)
LBE	(Local Business Enterprise)
MLBE	(Micro Local Business Enterprise)
SBE	(Small Business Enterprise)
MBE	(Minority Business Enterprise)
DPBT	(Persons With A Disability Or Disabilities Business Enterprise)
LGBT	(Lesbian, Gay, Bisexual, Transsexual Business Enterprise)

**Certified by an Agency?** ☐ No ☐ Yes (enter Certification Number and Certifying Agency below)

Certification #:

Agency:

Certification #:

Agency:

**Information regarding a vendor's racial or gender ownership status will not be used as a factor in the City's selection process for any contract.**

Please mail this form to: Purchasing & Contracting Department  
1200 Third Avenue, Suite 200  
San Diego, CA 92101

or fax to: 619/ 236-5904

**City of San Diego Purchasing & Contracting Department**  
**CONTRACTOR STANDARDS**  
***Pledge of Compliance***

Effective December 24, 2008, the Council of the City of San Diego adopted Ordinance No. O-19808 to extend the Contractor Standards Ordinance to all contracts greater than \$50,000. The intent of the Contractor Standards clause of San Diego Municipal Code §22.3224 is to ensure the City of San Diego conducts business with firms that have the necessary quality, fitness and capacity to perform the work set forth in the contract.

To assist the Purchasing Agent in making this determination and to fulfill the requirements of §22.3224(d), each bidder/proposer must complete and submit this *Pledge of Compliance* with the bid/proposal. If a non-competitive process is used to procure the contract, the proposed contractor must submit this completed *Pledge of Compliance* prior to execution of the contract. A submitted *Pledge of Compliance* is a public record and information contained within will be available for public review for at least ten (10) calendar days, except to the extent that such information is exempt from disclosure pursuant to applicable law.

All responses must be typewritten or printed in ink. If an explanation is requested or additional space is required, respondents must use the *Pledge of Compliance Attachment "A"* and sign each page. The signatory guarantees the truth and accuracy of all responses and statements. Failure to submit this completed *Pledge of Compliance* may make the bid/proposal non-responsive and disqualified from the bidding process. If a change occurs which would modify any response, Contractor must provide the Purchasing Agent an updated response within thirty (30) calendar days.

**A. PROJECT TITLE:**

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**B. BIDDER/CONTRACTOR INFORMATION:**

Legal Name	DBA		
Street Address	City	State	Zip
Contact Person, Title	Phone	Fax	

**C. OWNERSHIP AND NAME CHANGES:**

1. In the past five (5) years, has your firm changed its name?

☐ Yes      ☐ No

If **Yes**, use *Pledge of Compliance Attachment "A"* to list all prior legal and DBA names, addresses and dates when used. Explain the specific reasons for each name change.

2. In the past five (5) years, has a firm owner, partner or officer operated a similar business?

☐ Yes      ☐ No

If **Yes**, use *Pledge of Compliance Attachment "A"* to list names and addresses of all businesses and the person who operated the business. Include information about a similar business only if an owner, partner or officer of your firm holds or has held a similar position in another firm.

**D. BUSINESS ORGANIZATION/STRUCTURE:** Indicate the organizational structure of your firm. Check one only on this page. Use *Pledge of Compliance Attachment "A"* if more space is required.

☐ **Corporation** Date incorporated: \_\_\_\_/\_\_\_\_/\_\_\_\_ State of incorporation: \_\_\_\_\_

List corporation's current officers: President: \_\_\_\_\_  
Vice Pres: \_\_\_\_\_  
Secretary: \_\_\_\_\_  
Treasurer: \_\_\_\_\_

Is your firm a publicly traded corporation? ☐ Yes ☐ No

If Yes, name those who own five percent (5%) or more of the corporation's stocks:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ **Limited Liability Company** Date formed: \_\_\_\_/\_\_\_\_/\_\_\_\_ State of formation: \_\_\_\_\_

List names of members who own five percent (5%) or more of the company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ **Partnership** Date formed: \_\_\_\_/\_\_\_\_/\_\_\_\_ State of formation: \_\_\_\_\_

List names of all firm partners:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ **Sole Proprietorship** Date started: \_\_\_\_/\_\_\_\_/\_\_\_\_

List all firms you have been an owner, partner or officer with during the past five (5) years. Do not include ownership of stock in a publicly traded company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ **Joint Venture** Date formed: \_\_\_\_/\_\_\_\_/\_\_\_\_

List each firm in the joint venture and its percentage of ownership:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Note:** Each member of a Joint Venture must complete a separate *Contractor Standards Pledge of Compliance* for a Joint Venture's submission to be considered responsive.

**E. FINANCIAL RESOURCES AND RESPONSIBILITY:**

1. Is your firm in preparation for, in the process of, or in negotiations toward being sold?  
☐ Yes ☐ No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances, including name of the buyer and principal contact information.

2. In the past five (5) years, has your firm been denied bonding?  
☐ Yes ☐ No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances; include bonding company name.

3. In the past five (5) years, has a bonding company made any payments to satisfy claims made against a bond issued on your firm's behalf or a firm where you were the principal?  
☐ Yes ☐ No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances.

**F. PERFORMANCE HISTORY:**

1. In the past five (5) years, has your firm been found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for defaulting or breaching a contract with a government agency?  
☐ Yes ☐ No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances.

2. In the past five (5) years, has a government agency terminated your firm's contract prior to completion?  
☐ Yes ☐ No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances and provide principal contact information.

**G. COMPLIANCE:**

1. In the past five (5) years, has your firm or any firm owner, partner, officer, executives or management been criminally penalized or found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement for violating any federal, state or local law in performance of a contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws which affect employees?  
☐ Yes ☐ No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances surrounding each instance; include name of entity involved, specific infraction(s) or violation(s), dates of instances, and outcome with current status.

2. In the past five (5) years, has your firm been debarred or determined to be non-responsible by a government agency?  
☐ Yes ☐ No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances of each instance; include name of entity involved, specific infraction, dates, and outcome.

**H. BUSINESS INTEGRITY:**

1. In the past five (5) years, has your firm been convicted of or found liable in a civil suit for making a false claim or material misrepresentation to a private or governmental entity?  
☐ Yes ☐ No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances of each instance; include the entity involved, specific infraction(s) or violation(s), dates, outcome and current status.

2. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a crime, including misdemeanors, or been found liable in a civil suit involving the bidding, awarding, or performance of a government contract?  
☐ Yes ☐ No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances of each instance; include the entity involved, specific infraction(s), dates, outcome and current status.

**I. TYPE OF SUBMISSION:** This document is submitted as:

☐ Initial submission of *Contractor Standards Pledge of Compliance*.

☐ Update of prior *Contractor Standards Pledge of Compliance* dated \_\_\_\_/\_\_\_\_/\_\_\_\_.

**Complete all questions and sign below. Each *Pledge of Compliance Attachment "A"* page must be signed.**

Under penalty of perjury under the laws of the State of California, I certify I have read and understand the questions contained in this *Pledge of Compliance* and that I am responsible for completeness and accuracy of responses and all information provided is true to the best of my knowledge and belief. I further certify my agreement to the following provisions of San Diego Municipal Code §22,3224:

- (a) To comply with all applicable local, State and Federal laws, including health and safety, labor and employment, and licensing laws that affect the employees, worksite or performance of the contract.
- (b) To notify the Purchasing Agent within fifteen (15) calendar days upon receiving notification that a government agency has begun an investigation of the Contractor that may result in a finding that the Contractor is or was not in compliance with laws stated in paragraph (a).
- (c) To notify the Purchasing Agent within fifteen (15) calendar days when there has been a finding by a government agency or court of competent jurisdiction of a violation by the Contractor of laws stated in paragraph (a).
- (d) To provide the Purchasing Agent updated responses to the *Contractor Standards Pledge of Compliance* within thirty (30) calendar days if a change occurs which would modify any response.
- (e) To notify the Purchasing Agent within fifteen (15) days of becoming aware of an investigation or finding by a government agency or court of competent jurisdiction of a violation by a subcontractor of laws stated in paragraph (a).
- (f) To cooperate fully with the Purchasing Agent and the City during any investigation and to respond to a request for information within ten (10) working days from the request date.

**Failure to sign and submit this form with the bid/proposal shall make the bid/proposal non-responsive.**

\_\_\_\_\_  
Print Name, Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



City of San Diego Purchasing & Contracting Department

CONTRACTOR STANDARDS

*Pledge of Compliance Attachment "A"*

Provide additional information in space below. Use additional *Pledge of Compliance Attachment "A"* pages as needed; sign each page. Print in ink or type responses and indicate question being answered. Information provided will be available for public review, except if exempt from disclosure pursuant to applicable law.

ATTORNEY CLIENT CONFIDENTIAL

Under penalty of perjury under the laws of the State of California, I certify I have read and understand the questions contained in this *Contractor Standards Pledge of Compliance* and that I am responsible for completeness and accuracy of responses on this *Pledge of Compliance Attachment "A"* page and all information provided is true to the best of my knowledge.

\_\_\_\_\_  
Print Name, Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date